RULES OF THE MISSISSIPPI ETHICS COMMISSION

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CHAPTER 1: Commission Meetings

1. Meetings of the Mississippi Ethics Commission shall begin at 10:00 a.m. on the first Friday of each month and shall be held at the commission's office in the City of Jackson unless the commission, either at a regular meeting or by specially calling a meeting, sets another time, date or place. Notice of all Commission meetings shall be posted on the home page of the Commission's web site as soon as practicable. The chairman may cancel a meeting already scheduled or specially call a meeting. Notice of cancellation or of a specially called meeting shall be provided as soon as possible to all Commission members by whatever means of communication is available and practicable and most likely to reach each member under the circumstances. Notice is hereby provided that any Commission member may participate in any Commission meeting by teleconference or video means, in which event public access will be provided at the physical location of the meeting.

2. The commission may pretermit any meeting.

3. At all meetings the chairman, or in his or her absence the vice-chairman, shall preside and maintain decorum, ensuring the deliberate but expedient discharge of all business before the commission.

4. In all meetings the commission will comply with and follow the requirements of the Open Meetings Act, codified in Title 25, Chapter 41, Miss. Code of 1972.

5. The commission shall hold confidential sessions on all matters designated as confidential by the Ethics in Government Law, codified in Title 25, Chapter 4, Miss. Code of 1972.

6. Only commission members, commission staff members, attorneys for the commission, witnesses or other persons whose presence the commission deems necessary may attend confidential sessions. All other persons shall be excluded from the meeting area during confidential sessions.

7. The commission and its staff shall keep separate minutes of confidential sessions which shall not be subject to disclosure.

CHAPTER 2: Public Records Requests

8. In compliance with Section 25-61-5, Miss. Code of 1972, of the Public Records Act, the commission staff is authorized to produce or deny production of a public record no later than fourteen (14) working days from the date of request for the production of such record. However, in all instances the commission staff should endeavor to produce or deny production of a public record as quickly as possible under the circumstances.

9. When any person files or submits documents with the commission which the filer contends are exempt from disclosure under the Public Records Act, the filer shall provide a written statement at the time of filing which shall describe the documents filed and which shall fully explain why the documents are designated as exempt from disclosure and must specifically

cite any statute or other legal authority in support of such designation. Such written statement shall itself be a public record subject to disclosure.

10. Any document filed with the commission which contains trade secrets or confidential commercial or financial information subject to the protection of any applicable law or court decision shall be clearly designated as such on its face and accompanying cover letter at the time of filing and shall be placed in an envelope other than white. Each page of each document shall be marked confidential. Upon request to inspect or copy any document so designated, the commission shall notify the person who filed the document. Thirty (30) days after such notice, the document will be made available for public inspection or copying pursuant to the terms of this rule unless the filer shall have obtained a court order protecting such records as confidential pursuant to Section 25-61-9, Miss. Code of 1972.

11. Any person filing documents with the commission shall, prior to filing, redact from the documents any social security numbers, account numbers or dates of birth. The commission shall determine on a case-by-case basis whether similar information may be redacted by the filer to prevent identity theft. In no event will the commission bear any responsibility for a filer's failure to redact such information which leads to or may lead to identity theft or other crime or loss.

12. This chapter shall not apply to documents which relate to a confidential complaint as set forth in Section 25-4-19, Miss. Code of 1972, or a request for advisory opinion submitted pursuant to Section 25-4-17, Miss. Code of 1972.

CHAPTER 3: Lobbying Appeals

Purpose

The purpose of this policy is to set forth guidelines by which the Ethics Commission hearings on appeals by a Lobbyist or a Lobbyist's Client of civil penalties assessed by the Secretary of State's Office will be conducted and for preparing a record of said hearings.

The following procedures will be followed by the Ethics Commission members and staff in conducting appeals by a Lobbyist or a Lobbyist's Client of civil penalties assessed by the Secretary of State's Office and for preparing a record of said hearings.

Rules

13. Pre-hearing phase

13.1. The executive director of the Ethics Commission shall schedule a hearing upon receipt of a sworn application of a lobbyist or lobbyist's client from the Secretary of State's Office.

13.2. The executive director shall fix a time and place for a hearing and shall serve upon the parties written notice specifying the civil penalties that have been assessed against the lobbyist or lobbyist's client and notice of the time and place of the hearing at least twenty (20) calendar days prior to the hearing date. The hearing shall be set for a

date which is at least fourteen (14) days prior to the anticipated date of a regular monthly meeting of the Ethics Commission.

13.2.1. The notice may be served by mailing a copy thereof by certified mail, postage prepaid, to the last known business address of the lobbyist or lobbyist's client.

13.3. The Ethics Commission shall through its executive director, or his or her designee, issue subpoenas for attendance of witnesses and the production of books and papers at such hearing.

13.3.1. The lobbyist or lobbyist's client shall receive notice, included with the written notice of the hearing date, to provide a list of witnesses and/or books and papers to be presented during the hearing and if the Ethics Commission is being requested to issue subpoenas for same.

13.3.1.1. The lobbyist or lobbyist's client shall bear the cost of all witnesses and books and papers required by the lobbyist or lobbyist's client.

13.3.2. The Secretary of State, or his designee, shall be notified to present that office's position on the assessment of the civil penalties, to provide a list of witnesses and/or the production of books and papers supporting that office's position and if the Ethics Commission is being requested to issue subpoenas for same.

13.3.2.1. The Secretary of State's Office shall bear the cost of all witnesses and books and papers required by that office.

13.3.3. The Ethics Commission's subpoenas shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

13.4. The Commission hereby appoints the executive director or his designee chosen from a list preapproved by the Commission as hearing officer to conduct the hearing and administer oaths as may be necessary for the proper conduct of the hearing.

13.4.1. The hearing officer shall rule on all procedural matters during the hearing and shall be responsible for order and decorum.

13.4.1.1. The Ethics Commission shall determine what portion of the cost for a hearing officer the Secretary of State's Office or the lobbyist or lobbyist's client shall bear.

13.5. The executive director of the Ethics Commission, or his or her designee, shall organize a pre-hearing conference to be attended by the hearing officer; the lobbyist or lobbyist's client, and/or their attorneys; and the Secretary of State, or his designee.

14. Hearing phase

14.1. The hearing officer shall preside over the hearing; administer oaths; rule on procedural matters; and, maintain order and decorum.

14.2. Ethics Commission members may attend the hearing to listen to all testimony and other evidence presented.

14.2.1. The Ethics Commission shall determine what portion of the cost of a court reporter and, if necessary, one (1) transcript for the use by the Ethics Commission the Secretary of State's Office or the lobbyist or lobbyist's client shall bear.

14.3. The Ethics Commission shall not be bound by strict rules of procedure or by the rules of evidence in the conduct of the proceedings.

14.4. The hearing shall be open to the public.

15. Post-hearing phase

15.1. After conclusion of the hearing, the commission or hearing officer shall reduce its decision to writing and forward a certified copy thereof to the last known address of the parties by way of United States first-class, certified mail, postage paid.

15.2. The cost of the preparation of the record of the proceedings for purpose of an appeal from a decision of the Ethics Commission shall be assessed to and prepaid by the party filing the notice of appeal in accordance with the Uniform Rules of Circuit and County Court. Such cost shall be paid upon filing the notice of appeal pursuant to Rules 5.04 and 5.09 of the Uniform Rules of Circuit and County Court.

CHAPTER 4: Open Meetings Disputes

Purpose/Scope

The following rules and regulations are promulgated by the Commission pursuant to Mississippi Code Annotated § 25-41-15, as amended by Senate Bill No. 2983, enacted during the 2008 Regular Session of the Mississippi Legislature. These rules and regulations apply to hearings within the Commission's jurisdiction pursuant to Title 25, Chapter 41of the Mississippi Code of 1972.

Rules

16. Prehearing Phase

16.1. Upon receiving a complaint, the executive director shall forward a copy of the complaint, via certified mail, postage prepaid to the head of the public body against which the complaint has been made.

16.2. The public body shall have fourteen (14) days from receipt of the complaint to file a response with the Commission.

16.3. After receiving the response to the complaint or, if no response is received after fourteen (14) days, the Commission, in its discretion, may dismiss the complaint or proceed by setting a hearing in accordance with these rules and regulations.

16.4. Appointment and Authority of Hearing Officer.

16.4.1. The Commission hereby appoints the Executive Director or his designee chosen from a list preapproved by the Commission as hearing officer for all open meetings disputes within the Commission's jurisdiction pursuant to Title 25, Chapter 41of the Mississippi Code of 1972.

16.4.2. The hearing officer has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under these regulations. The hearing officer may require production, through order or subpoena, of evidence upon all matters embraced in the open meetings dispute, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The hearing officer shall have the power to administer oaths, examine witnesses in open meetings cases pending before the Commission, examine and report upon all matters referred to him. The hearing officer shall have the power to enter protective orders.

16.4.3. The hearing officer shall have the power to direct the issuance of subpoenas for witnesses to attend before him or her to testify in the cause. If any witness shall fail to appear, the hearing officer shall proceed by process to compel the witness to attend and give evidence.

16.4.4. The hearing officer may direct the parties to participate in a conference or conferences prior to the hearing on the merits, for such purposes as expediting the disposition of the action and facilitating resolution of the case.

16.4.5. The hearing officer may issue rulings on scheduling matters, protective orders, admissibility of evidence, and other procedural or pre-hearing matters.

16.4.6. The hearing officer may alter any of the time periods provided by these regulations, upon his own initiative or upon a motion by a party or other person affected for good cause shown.

16.5. Appearance through Counsel.

16.5.1. Parties to proceedings governed by this regulation may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the hearing officer.

16.5.2. When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.

16.5.3. When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests, and other papers on behalf of the party, including any request for issuance of subpoena

16.6. Pre-Hearing Conference/Scheduling.

16.6.1. The hearing officer may enter a scheduling order, or any such other order, that sets deadlines, conferences or hearings deemed necessary or appropriate by the hearing officer.

16.6.2. Oral argument will not normally be granted. However, the hearing officer may grant oral argument on any motion in his sole discretion.

16.7. Subpoenas requested by parties.

16.7.1. The hearing officer shall have the power to issue subpoenas for testimony or documents.

16.7.2. Subpoenas may be issued to parties upon request, but only for the following purposes:

16.7.2.1. To compel a non-party witness to appear and give oral testimony at any hearing scheduled under these regulations; or

16.7.2.2. To compel any person to appear at the hearing on the merits of the case, to give testimony, or to produce documents or other tangible things.

16.7.3. Subpoenas requested by a party shall be submitted to the hearing officer on a form approved by the Commission. Concurrently with the submission of the subpoena to the hearing officer, the requesting party shall serve a copy on all of the parties to the proceeding and shall file proof of such service with the Commission and the hearing officer.

16.7.4. Subpoenas shall not be issued in blank. A subpoena submitted for issuance must contain the title and number of the case, the name of the person to whom it will be directed, the date, time and place of hearing, and the name and signature of the requesting party or his attorney. A subpoena duces tecum must, in addition, contain a complete description of specific documents or other tangible things that the witness will be required to produce at the hearing.

16.7.5. Unless the witness agrees otherwise, a subpoena issued for the purposes provided by Rule 16.7.2.2 above must be served by the requesting party at least ten (10) calendar days prior to the hearing. A subpoena will be issued during the hearing

or on less than ten (10) days notice only upon order of the hearing officer for reasonable cause shown by the requesting party.

17. Hearing Phase

17.1. Preliminary Report and Recommendation by Hearing Officer

17.1.1. Prior to a hearing on the merits, the hearing officer may prepare a preliminary report and recommendation, including, if appropriate, proposed findings of fact and conclusions of law, based upon the record available to the hearing officer. The hearing officer shall serve a copy of such preliminary report and recommendation on all parties and file a copy with the Commission. Along with the preliminary report and recommendation, the hearing officer shall provide the parties with a notice of proposed hearing date in the event either party objects to the preliminary report and recommendation as provided in Rule 17.1.2 below.

17.1.2. Within five (5) business days of receiving a copy of the preliminary report and recommendation, any party may file specific written objections to the preliminary report and recommendations. Failure to file such objection waives that party's right to a hearing on the merits. Upon receiving such objection, the hearing officer shall set the hearing on the merits for the date proposed in the notice of proposed hearing date previously mailed to the parties. After the hearing on the merits, the hearing officer shall prepare a final report and recommendation. However, nothing contained in these rules shall require the hearing officer to set a hearing on the merits for a complaint in which the hearing officer recommends dismissal.

17.1.3. If no objection to the preliminary report and recommendation is received within the time provided in Rule 13.1.2 above, the hearing officer shall prepare a final report and recommendation or, in the hearing officer's discretion, set the matter for a hearing on the merits for the date proposed in the notice of proposed hearing date. If the hearing officer sets the matter for a hearing on the merits, the hearing officer shall prepare a final report and recommendation after such hearing.

17.1.4. The hearing officer shall file the final report and recommendation with the Commission and present it to the Commission at its next regularly scheduled meeting. The hearing officer shall serve a copy of the final report and recommendation on the parties. The Commission can enter a final order dismissing the case, modifying the report and recommendation, or adopting the report and recommendation, or the Commission can enter an order remanding the case for further hearing.

17.2. Conduct of Hearings.

17.2.1. Hearings shall be informal, and the Miss. Rules of Evidence while applicable, shall be relaxed.

17.2.2. Nothing contained herein shall prohibit the hearing officer from entering orders or making rulings which provide for the orderly conduct of said hearings. The hearing officer may limit the issues to be heard during any hearing.

17.2.3. The hearing officer may also make rulings concerning any matters which do not involve a disputed issue of fact without setting a hearing concerning same.

17.3. Continuances.

17.3.1. Continuances will not be granted except for good cause shown.

17.4. Recommendation of the Hearing Officer and Decision of the Commission.

17.4.1. All findings of fact made by the hearing officer or the Commission shall be based upon the preponderance of the evidence. The hearing officer shall reduce all recommendations to writing and submit those recommendations to the Commission as described herein.

18. Post-Hearing Phase

18.1. The cost of the preparation of the record of the proceedings for purpose of an appeal from the decision of the Ethics Commission shall be assessed to the party filing the appeal.

CHAPTER 5: Public Records Opinions

Purpose/Scope

The following rules and regulations are promulgated by the Commission pursuant to Mississippi Code Annotated, Title 25, Chapter 61, the Mississippi Public Records Act of 1983, as amended by Senate Bill No. 2983, enacted during the 2008 Regular Session of the Mississippi Legislature. These rules and regulations apply to proceedings within the Commission's jurisdiction pursuant to the title and chapter aforenamed.

Rules

19. Requests for Public Records Opinions

19.1. As set forth in Section 25-61-13, Miss. Code of 1972, any person denied the right to inspect or copy public records may request an opinion of the Ethics Commission as to whether the public body is obligated to produce the records requested.

19.2. The person shall attach to the request for opinion a copy of his or her written records request and the written denial of his or her records request, if any.

20. Responses to Requests for Public Records Opinions

20.1. Upon receipt of the request, the executive secretary shall forward a copy of the request and any attached documents to the public official who denied the records request or failed to respond to it, as well as to the head of the public body involved, if they are separate persons.

20.2. The public body shall have fourteen (14) days from receipt of the documents to file a response with the Ethics Commission.

20.3. The response shall be in writing and shall include a copy of the written public records rules, policies or procedures previously adopted by the responding public body. The response shall also include a copy of any correspondence between the requestor and responding public body as well as any index or other writing or record provided to the requestor by the public body.

21. Issuance of Public Records Opinions

21.1. Whenever a dispute exists regarding access to public records, any confidentiality, privilege or exemption claimed by the responding public body or regarding any fees charged by the public body for the disclosure of public records, the burden of proof shall lie with the public body to demonstrate by clear and convincing evidence or applicable legal authority that its actions were reasonable, lawful and justified under the circumstances. In the absence of such proof, the Ethics Commission shall presume the records were denied or costs calculated in violation of the Public Records Act.

21.2. After receiving the response to the request for opinion or after fourteen (14) days, whichever comes first, the executive director or his designee shall present a draft opinion to the Ethics Commission at its next meeting if enough information is available on which to base an opinion. At that meeting or a future meeting, the commission shall issue an opinion.

22. Mediation of Public Records Disputes

22.1. In keeping with Section 25-61-13(1)(b)(ii), Miss. Code of 1972, the executive director or his designee are hereby authorized to mediate any dispute arising under the Mississippi Public Records Act.

CHAPTER 6: Ethics Hearings

Purpose/Scope

The following rules are established by the Commission pursuant to Mississippi Code Annotated, Sections 25-4-15, 25-4-17 and 25-4-107, as amended by Senate Bill No. 2983, enacted during the 2008 Regular Session of the Mississippi Legislature. These rules apply to hearings within the Commission's jurisdiction pursuant to Title 25, Chapter 4 of the Mississippi Code of 1972.

Rules

23. Prehearing Phase

23.1. Upon a finding that probable cause exists to believe a violation of law has occurred, the commission shall set a hearing on the matter and shall cause a written notice of the time and place of the hearing to be served upon the respondent at least sixty (60) calendar days prior to the hearing date. A finding of probable cause shall constitute removal of the statutory confidentiality imposed by Sections 25-4-21 and 25-4-23, as authorized in Section 25-4-17(g), Miss. Code of 1972.

23.1.1. The executive director shall cause a copy of the written notice to be served on the respondent by personal service or by mailing a copy thereof by certified mail, postage prepaid, to the last known business address of the respondent or his or her attorney.

23.2. Appointment and Authority of Hearing Officer.

23.2.1. The commission may appoint a hearing officer to rule on procedural matters, issue subpoenas, conduct any hearing, administer oaths as may be necessary for the proper conduct of the hearing, or such other matters as ordered by the Commission.

23.2.2. The hearing officer may direct the parties to participate in a conference or conferences before the hearing on the merits, for such purposes as expediting the disposition of the action and facilitating resolution of the case.

23.2.3. The hearing officer may issue rulings on discovery issues, scheduling matters, protective orders, admissibility of evidence, and other procedural or pre-hearing matters.

23.3. Ex Parte Communications.

23.3.1. Neither a respondent nor his or her representative shall communicate with the hearing officer directly or indirectly in connection with any issue of fact or law related to a proceeding pending before the Commission, except upon notice and opportunity to all parties to participate.

23.3.2. The hearing officer may, with the consent of the parties, confer separately with the parties and/or their lawyers in an effort to mediate or settle a pending matter.

23.3.3. This rule shall not preclude:

23.3.3.1. The hearing officer from consulting with Commission counsel concerning any matter before the Commission; or

23.3.3.2. A party or his representative from conferring with the hearing officer or Commission counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

23.4. Appearance through Counsel.

23.4.1. Parties may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the hearing officer.

23.4.2. When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.

23.4.3. When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests, and other papers on behalf of the party, including any request for issuance of subpoenas.

23.5. Pre-Hearing Conference/Scheduling.

23.5.1. The hearing officer may enter a scheduling order that sets deadlines, conferences or hearings, deemed necessary or appropriate.

23.5.2. The hearing officer may rule on any motion without consulting the parties and without granting oral argument.

23.6. Discovery.

23.6.1. Subject to the exceptions set forth below, if either party requests discovery, the party opposite must disclose and permit the requesting party to inspect, copy, test, and photograph upon written request and without the necessity of an order by the hearing officer the following which is in the possession, custody, or control of the party opposite, the existence of which is known or by the exercise of due diligence may become known to the party opposite:

23.6.1.1. Names and addresses of all witnesses in chief proposed to be offered by the party at trial, together with a copy of the contents of any statement, written, recorded or otherwise preserved of each such witness and the substance of any oral statement made by any such witness;

23.6.1.2. Copy of any written or recorded statement of the respondent and the substance of any oral statement made by the respondent;

23.6.1.3. Copy of the criminal record of the respondent, if proposed to be used to impeach;

23.6.1.4. Any reports, statements, or opinions of experts, written, recorded or otherwise preserved, made in connection with the particular case and the substance of any oral statement made by any such expert;

23.6.1.5. Any physical evidence and photographs relevant to the case or which may be offered in evidence; and

23.6.1.6. Any exculpatory material concerning the respondent.

23.6.2. The hearing officer may limit or deny disclosure authorized herein if he or she finds that there is a substantial risk to any person of physical harm, intimidation, economic reprisals, or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to the requesting party.

23.6.2.1. Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda which contain the opinions, theories, or conclusions of either party's attorneys or members of legal staff.

23.6.3. Both the commission and the respondent have a duty to timely supplement discovery. If, subsequent to compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party shall promptly notify the other party or the other party's attorney of the existence of such additional material, and if the additional material or information is discovered during a hearing, the hearing officer shall also be notified.

23.6.4. The attorney receiving materials on discovery is responsible for those materials and shall not distribute them to third parties.

23.6.5. Upon a showing of cause, the hearing officer may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party's attorney to make beneficial use thereof.

23.6.5.1. When some parts of certain material are discoverable under these rules, and other parts are not discoverable, as much of the material should be disclosed as is consistent with the rules.

23.6.5.2. Material excised or redacted pursuant to judicial order or order of the hearing officer shall be sealed and preserved in the records of the hearing officer, to be made available to the circuit court in the event of an appeal.

23.6.5.3. In the event there are matters arguably within the scope of a party's discovery request or an order for discovery, and the opposing party is of the opinion that the requesting party is not entitled to discovery of same, the opposing party shall, as soon as is reasonably practicable, file with the

hearing officer a written statement describing the nature of the information or the materials at issue as fully as is reasonably possible without disclosure of same and stating the grounds for objection to disclosure. Subject to the limitations otherwise provided in these rules, determinations such as whether the matters requested in discovery are relevant to the case, exculpatory, possible instruments of impeachment, and the like, may be made only by the party requesting or to receive the discovery.

23.6.6. Upon request of any person, the hearing officer may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the hearing officer enters an order granting relief following a hearing in camera, the entire record of such hearing shall be sealed and preserved in the records of the hearing officer, to be made available to the circuit court in the event of an appeal.

23.6.7. If at any time prior to a hearing on the merits it is brought to the attention of the hearing officer that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the hearing officer may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as he or she deems just under the circumstances.

23.6.7.1. If during the course of a hearing on the merits, either party attempts to introduce evidence which has not been timely disclosed to the opposing party as required by these rules, and the opposing party objects to the introduction for that reason, the hearing officer shall act as follows:

23.6.7.1.1. Grant the opposing party a reasonable opportunity to interview the newly discovered witness, to examine the newly produced documents, photographs or other evidence; and

23.6.7.1.2. If, after such opportunity, the opposing party claims unfair surprise or undue prejudice and seeks a continuance or mistrial, the hearing officer shall, in the interest of justice and absent unusual circumstances, exclude the evidence or grant a continuance for a period of time reasonably necessary for the opposing party to meet the non-disclosed evidence.

23.6.7.1.3. The hearing officer shall not be required to grant a continuance for such a discovery violation if the party attempting to introduce such evidence withdraws its efforts to introduce the evidence.

23.6.8. Willful violation by an attorney or party of an applicable discovery rule or an order issued pursuant thereto may subject the attorney or party to appropriate sanctions by the hearing officer.

23.7. Subpoenas.

23.7.1. Pursuant to the commission's authority granted in Section 25-4-19, Miss. Code of 1972, the hearing officer shall issue subpoenas, including subpoenas duces tecum, upon the request of a party, in accordance with these rules.

23.7.2. Subpoenas may be issued only for the following purposes:

23.7.2.1. To compel a non-party witness to appear and give oral testimony at any hearing scheduled under these regulations; or

23.7.2.2. To compel any person to appear at the hearing on the merits of the case, to give testimony, or to produce documents or other tangible things.

23.7.3. Subpoenas shall be submitted to the hearing officer for issuance on a form approved by the Commission. Concurrently with the submission of the subpoena to the hearing officer, the requesting party shall serve a copy on all of the parties to the proceeding and shall file proof of such service with the hearing officer. All subpoenas issued shall be filed with the commission.

23.7.4. Subpoenas shall not be issued in blank. A subpoena submitted for issuance must contain the title and number of the case, the name of the person to whom it will be directed, the date, time and place of hearing or deposition, and the name and signature of the requesting party or his attorney. A subpoena duces tecum must, in addition, contain a complete description of specific documents or other tangible things that the witness will be required to produce at the hearing.

23.7.5. Unless the witness agrees otherwise, a subpoena issued for the purposes provided by Rule 20.6.2.2 must be served by the requesting party at least ten (10) calendar days prior to the hearing. A subpoena will be issued during the hearing or on less than ten (10) days notice only upon order of the hearing officer for reasonable cause shown by the requesting party. Proof of service shall be filed with the commission.

23.8. Protective Orders.

23.8.1. Pursuant to the commission's authority granted in Section 25-4-19, upon motion by a party or by a person to whom a subpoena is directed, or from whom documents or testimony is sought, the hearing officer may enter a protective order quashing or modifying the subpoena for good cause shown.

23.9. Motions.

23.9.1. All motions shall be in writing, unless made during a hearing.

23.9.2. A motion shall state with particularity the grounds therefore, shall be supported by a memorandum of authorities, and shall set forth the relief or order sought.

23.9.3. Every written motion shall be filed with the hearing officer and served by the moving party upon the opposing party or as the hearing officer directs.

23.9.4. An opposing party shall have ten (10) calendar days after service of the motion within which to file and serve a memorandum of authorities in opposition to the motion.

23.9.5. The moving party shall have five (5) calendar days after service of the opposing memorandum to serve and file a reply memorandum of authorities if he so desires.

23.9.6. If a motion or opposition is served by mail, three (3) calendar days shall be added to the time periods specified herein for response.

23.9.7. The failure of a moving party to file a memorandum of authorities in support of a motion shall constitute consent to the denial of the motion. The failure of an opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of the motion.

24. Hearing Phase

24.1. Conduct of Hearings.

24.1.1. Pursuant to Section 25-4-107, Miss. Code of 1972, hearings shall be conducted according to the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence. The Mississippi Rules of Civil Procedure applicable to these hearings are Rules 42, 43, 50, 52 and 53. Other Mississippi Rules of Civil Procedure do not apply to these hearings.

24.1.2. The following procedures will apply when appropriate:

24.1.2.1. The respondent will be allowed to present and argue any legal objections to the complaint set forth in the answer; the commission staff may thereupon present its answering argument; and thereafter the respondent may present rebuttal argument. The matter will then be submitted to the hearing officer for decision. The hearing officer may rule upon such objections immediately or take the matter under advisement and proceed with the hearing.

24.1.2.2. The commission staff will present its opening statement on the merits. The respondent will then be permitted to make an opening statement of the defense, or he may reserve the same until commencement of the presentation of the defense.

24.1.2.3. The commission staff will then present its case in chief in support of the complaint.

24.1.2.4. Upon conclusion of the commission staff's case in chief, the respondent may move for dismissal of the complaint. The hearing officer may hear

arguments on the motion, or may grant, deny, or reserve decision thereon, with or without argument.

24.1.2.5. If no motion to dismiss is made, or if such motion is denied or decision reserved thereon, the respondent shall thereupon present the case for the defense.

24.1.2.6. Upon conclusion of the respondent's case, the commission staff may present its case in rebuttal.

24.1.2.7. Upon conclusion of the commission staff's case in rebuttal, the commission staff shall present its closing argument, the respondent may present answering argument, and thereafter the commission staff may present rebuttal argument. Thereupon the matter will stand submitted for decision.

24.1.2.8. The hearing officer may ask questions of witnesses, and may request or allow additional evidence at any time, including additional rebuttal evidence.

24.2. Failure or Refusal to Testify.

24.2.1. If a respondent fails to testify in his own behalf or asserts a claim of privilege with respect to any question propounded to him, the hearing officer may infer therefrom that such testimony or answer would have been adverse to his case.

24.2.2. If any person controlling, controlled by, or under common control with, or employed by, or an agent of, a respondent fails to respond to a subpoena, or asserts a claim of privilege with respect to any question propounded to him, the hearing officer may, taking into account all of the circumstances, infer that such testimony would have been adverse to the respondent.

24.3. Continuances.

24.3.1. Continuances shall not be granted by the hearing officer except for good cause shown.

24.4. Defaults.

24.4.1. Failure of a respondent to appear personally at a hearing on the merits without having obtained a waiver of appearance, shall constitute an admission of all matters and facts alleged against such respondent, and shall be deemed a waiver of the right to an evidentiary hearing. In such cases the hearing officer may take action based upon such admission or upon any other evidence, including affidavits, and without any further notices whatever to the respondent.

24.5. Recommendation of the Hearing Officer and Decision of the Commission.

24.5.1. All findings of fact made by the hearing officer shall be based upon clear and convincing evidence. The hearing officer shall reduce his recommendations to writing and submit those recommendations to the Commission. The hearing officer shall include written recommendations regarding penalties, if any. The hearing officer shall appear before the Commission upon request to participate in deliberation required to render a decision on the merits. The Commission can enter a final order dismissing the case, modifying the report and recommendation, or adopting the report and recommendation, or the Commission can enter an order remanding the case for further hearing.

25. Post-hearing phase

25.1. After conclusion of the hearing, the commission or any hearing officer appointed hereunder shall reduce its decision to writing and forward a certified copy thereof to the last known address of the respondent, the complainant and the executive director by way of United States first-class, certified mail, postage paid.

25.2. The cost of the preparation of the record of the proceedings for purpose of an appeal from a decision of the Ethics Commission shall be assessed to and prepaid by the party filing the notice of appeal in accordance with the Uniform Rules of Circuit and County Court. Such cost shall be paid upon filing the notice of appeal pursuant to Rules 5.04 and 5.09 of the Uniform Rules of Circuit and County Court.

CHAPTER 7: Written Opinions of the Executive Director

Purpose/Scope

The following rules and regulations are established by the Commission pursuant to Section 4, Senate Bill No. 2983, enacted during the 2008 Regular Session of the Mississippi Legislature, and codified in Section 25-4-17, Miss. Code of 1972, to authorize the executive director to issue written opinions in regard to any standards of conduct set forth in Article 3, Chapter 4, Title 25, Miss. Code of 1972.

Rules

26. As set forth in Section 25-4-17, Miss. Code of 1972, any written opinion of the executive director shall be based upon prior opinions issued by the commission or reported court decisions of Mississippi courts, are not binding on the commission, shall not be published, and shall be ratified or rejected by the commission at the next subsequent meeting of the commission.

26.1. If the commission ratifies the opinion, the requestor shall not be liable for funds described in the request for opinion, and the requestor shall enjoy the immunity from liability set forth elsewhere in Section 25-4-17.

26.2. If the commission rejects the opinion, the requestor shall not be liable for funds described in the request for opinion that are paid before receipt of notice that the opinion had been rejected by the commission.

27. The executive director is hereby authorized to issue written opinions as set forth in Section 25-4-17, Miss. Code of 1972, and in these rules.

27.1. The executive director may issue written opinions, in his discretion, when the circumstances presented by the requestor are such that awaiting an opinion by the commission (a) would impose an undue inconvenience upon the requestor or (b) could result in a violation of law.

27.2. The executive director may not issue written opinions regarding past action.

27.3. Any request for a written opinion of the executive director must be submitted in writing in a manner which satisfies the executive director that the person submitting the request is in fact the same person he or she purports to be and that the person submitting the request is seeking advice on his or her own behalf or on behalf of another person with that other person's permission.

27.4. A request for a written opinion of the executive director may only be submitted by or on behalf of a "public servant," as defined in Section 25-4-103, Miss. Code of 1972, someone who may be a public servant or someone who is considering candidacy, appointment or employment as a public servant.

27.5. Within ninety-six hours of ratification or rejection of the opinion of the executive director, the commission's staff shall transmit written notification to the requestor regarding the nature of the commission's action on the opinion.

27.6. The commission's staff shall keep a complete, indexed record of all opinions issued by the executive director.