

Chapter 3 - ADJUDICATORY PROCEEDINGS FOR FAILURE TO FILE AN ANNUAL STATEMENT OF FINANCIAL DISCLOSURE.

9.01 Authority: These rules are promulgated pursuant to Legislative Law (LL) §§ 80 (7) (c) & 80 (11) and Public Officers Law (POL) § 73-a (4).

9.02 Purpose: These rules are intended to:

1. Advise respondents of the procedure for conducting adjudicatory proceedings regarding failure to file an Annual Statement of Financial Disclosure. These rules do not apply to failure to file POL § 73 (6) (“short form”) financial disclosure statements.

2. Provide procedures to notify respondents of penalties for failure to file an Annual Statement of Financial Disclosure, including civil penalty assessments made by the Commission pursuant to LL § 80 (11).

9.03 Jurisdiction: Pursuant to LL § 80 (9) and (11), the Legislative Ethics Commission has authority to adjudicate failure to file violations of POL § 73-a with regard to legislative employees (as defined in POL § 73-a (1) (d), members of the legislature and candidates for member of the legislature.

10.00 DEFINITIONS:

1. Commission: “Commission” means the Legislative Ethics Commission established pursuant to L. 2007, c. 14. Any non-ministerial action of the Commission requires a vote of the Commission, and such action must be approved by a majority of the Commission without vacancy.

2. Filing Date: For purposes of these rules, “filing date” shall mean the date the Annual Statement of Financial Disclosure is required by law to be filed with the Legislative Ethics Commission pursuant to POL § 73-a.

3. Respondent: “Respondent” shall mean any candidate for member of the legislature, member of the legislature or legislative employee who is required to file a statement pursuant to POL § 73-a (2) who has failed to file such statement by the applicable filing date.

4. Statement: In the context of a document required to be filed, “statement” shall mean the Annual Statement of Financial Disclosure required to be filed pursuant to POL § 73-a (2) (a).

11.00 PRE-HEARING PROCEDURES FOR FAILURE TO FILE CASES:

All notices sent under this section shall be sent to the respondent’s home address or other address on file with the Commission or as requested by the reporting individual.

11.01 Confidential Notice of Deficiency for Failure to File: If a person required to file a statement has failed to file such statement by the filing date, a confidential Notice of Deficiency for failure to file shall be sent to the respondent pursuant to LL § 80 (9). This confidential Notice of Deficiency shall be signed by the co-chairs.

11.02 Content of Notice of Deficiency for Failure to File:

The notice shall contain the following:

1. A statement that the respondent has failed to file a required Annual Statement of Financial Disclosure.
2. A statement of the filing date applicable to the respondent.
3. A statement that the respondent has fifteen days from the date of this notice to cure the violation without being subject to imposition of a penalty.
4. A statement of the penalties that could be imposed for continued failure to file. In the case of legislative employees, a statement that the appointing authority and the Speaker or Temporary President of the Senate, as the case may be, who has jurisdiction over the appointing authority will receive a copy of the Notice of Delinquency which will be sent to the respondent unless the deficiency is timely cured. In the case of members, a statement that the Speaker of the Assembly or the Temporary President of the Senate, as appropriate, will receive a copy of the Notice of Delinquency which will be sent to the respondent unless the deficiency is timely cured.
5. A blank copy of the Annual Statement of Financial Disclosure required to be filed shall be included with this notice.

11.03 Notice of Delinquency for Failure to File: If a respondent has failed to file a statement within the 15 day period provided by rule 11.02, the Commission, at its earliest convenience, shall send a Notice of Delinquency to the respondent. The notice shall be signed by the co-chairs. For legislative employees, a copy shall be sent to the appointing authority and the Speaker or Temporary President of the Senate, as the case may be, who has jurisdiction over the appointing authority. For legislative members, a copy of the notice shall be sent to the Speaker of the Assembly or the Temporary President of the Senate, as appropriate. If a respondent is a candidate for member of the legislature, the notice shall be sent only to the respondent .

11.04 Content of Notice of Delinquency for Failure to File:

The notice shall contain the following:

1. A statement that the individual has failed to file an Annual Statement of Financial Disclosure despite a prior Notice of Deficiency for failure to file.

2. A statement that a civil penalty may be imposed under authority of LL § 80 (11) which authorizes a maximum civil penalty of \$40,000 for a knowing and willful failure to file.
3. A statement that the Notice of Delinquency shall be made available for public inspection at the office of the Legislative Ethics Commission and shall be posted on the Commission's public web site.
4. A statement that copies of the Notice of Delinquency shall be sent to the appointing authority and the Speaker of the Assembly or Temporary president of the Senate, as the case may be, who has jurisdiction over the appointing authority for legislative employees, or in the case of members, to the Speaker of the Assembly or Temporary president of the Senate, as appropriate.
5. A statement that the respondent must immediately file the required statement.
6. With the Notice of Delinquency sent to the respondent, the Commission shall provide the respondent with a copy of these rules and POL § 73; § 73-a; § 74 and LL § 80. The Commission shall also provide a blank copy of the Annual Statement of Financial Disclosure required to be filed by the respondent.

12.00 SHOW CAUSE HEARING:

12.01 Notice of Show Cause Hearing: A Notice of Delinquency shall, in appropriate cases, be followed by a Notice to Show Cause why respondent should not be found in violation of POL § 73-a (4) and subject to a civil penalty. The show cause hearing is an adjudicatory proceeding pursuant to these rules.

12.02 Form of Notice of Show Cause Hearing: The notice shall be signed by the Commission co-chairs and contain the following:

1. A statement indicating that the Legislative Ethics Commission has jurisdiction over the respondent.
2. A statement that the respondent shall appear at the hearing before the Legislative Ethics Commission to show cause why respondent should not be found in violation of POL § 73-a (4) and subject to a civil penalty for a knowing and willful failure to file.
3. A summary of staff attempts to contact respondent and the results of such attempts.
4. The date, time, and place of the hearing.
5. A statement that respondent's failure to appear at the hearing may be deemed a waiver of right to be heard.
6. A statement that respondent may be accompanied by counsel at the hearing.

7. A copy of Civil Rights Law § 73 and a general statement of the matter under investigation.

12.03 Minimum Notice: A show cause hearing shall not be scheduled fewer than 10 days from the date the Notice of Show Cause Hearing is sent to the respondent.

13.00 SHOW CAUSE HEARING: General Rules

13.01 Non-public Hearing: No hearing or proceeding of the Commission shall be open to the public, except if expressly provided otherwise by the Commission.

13.02 Public Disclosure of Rules: These rules shall be available to the public.

13.03 Representation by attorney: Any attorney who represents a respondent shall file a Notice of Appearance with the Commission.

13.04 Service of Papers: All papers to be served upon a party under this chapter shall be served personally or by certified mail, return receipt requested, on the attorney of record.

13.05 Oaths and Affirmations: All Commission members shall have the power to administer oaths and affirmations. Affidavits as to relevant facts may be received in lieu of the oral testimony of the persons making such affidavits.

13.06 Non-Applicability of Other Commission Rules: The hearing procedures under Chapter 2 of these rules, including pre-hearing disclosure, are inapplicable to proceedings under this chapter.

14.00 SHOW CAUSE HEARING PROCEDURE:

14.01 Adjournment: Upon good cause shown or on its own motion, the Commission may grant an adjournment of a scheduled hearing or extend the time available to comply with a requirement of these rules.

14.02 Evidentiary Standard: The final decision of the Commission with regard to whether respondent has knowingly and wilfully failed to file a statement shall be based upon a fair preponderance of the competent evidence admitted.

14.03 Conduct of Show Cause hearing:

1. The hearing shall be conducted before five or more members of the Commission.

2. The Commission shall designate a member of the Commission to serve as the presiding officer for the purpose of supervising the conduct of the hearing.

3. The hearing shall commence with an opening statement by staff detailing the alleged violation pending against the respondent and the evidence supporting the allegation.
4. Respondent then shall have an opportunity to deny, rebut, or admit and explain mitigating factors to the charge stated at the outset of the hearing.
5. Respondent shall have the right to present any evidence, including exhibits, that will support a defense to the charge.
6. Any member of the Commission and designated staff shall have the right to examine witnesses at the hearing.

14.04 Defense of Failure to File: A respondent who has properly filed a required statement may furnish the Commission with a copy of a signed statement stamped received by the Commission in lieu of appearing personally at the hearing. Receipt of such statement by the Commission prior to the hearing shall be a complete defense to a charge of failure to file a required statement. However, nothing in this rule shall be construed to limit or preclude disciplinary action which may be imposed by legislative leadership in connection with late filing.

14.05 Hearing Appearance by Written Submission: A respondent may elect to appear by written submission to the Commission in lieu of a personal appearance. An appearance by written submission should state that it is made in lieu of a personal appearance. Statements contained in an appearance by written submission must be verified; i.e. submitted under oath or affirmation. No right to an additional hearing before the Commission shall be inferred from the Commission's recognition of an appearance by written submission.

14.06 Waiver of Hearing: A respondent who fails to appear at a scheduled hearing where no adjournment was timely requested or, if requested, was not granted, may be deemed to have waived the right to a hearing.

14.07 Default Order: The Commission may, upon waiver of a respondent's right to a hearing, render a final decision on the merits based on the record before it.

14.08 Recording Hearing: The hearing shall be electronically recorded. A transcript of the hearing shall be available to respondent at cost.

14.09 Consent Agreement Procedure: The Commission may enter into a consent agreement in lieu of assessing a civil penalty or in addition thereto. The Commission must vote to approve the consent agreement.

14.10 Testimony: All oral testimony taken before the Commission shall be under oath.

- 14.11 Deliberation: The Commission may reserve decision on the matter for a reasonable period.
- 14.12 Adjudicatory Proceeding Record: A record of the adjudicatory proceeding shall be made. At a minimum, the record shall include the following:
1. The Notice of Deficiency.
 2. The Notice of Delinquency.
 3. In the case of candidates, a copy of the list published pursuant to Public Officers Law § 73-a (2) (d).
 4. The Notice of Show Cause Hearing.
 5. Evidence admitted.
 6. Any correspondence from the respondent submitted to the Commission which is received prior to the show cause hearing.
 7. Findings of fact and conclusions of law.
- 14.13 Decision: The decision of the Commission shall be in writing, signed by the Commission co-chairs and shall include findings of fact, conclusions of law and rationale.
- 14.14 Order: If at least five members of the Commission find that the respondent has knowingly and wilfully failed to file a required financial disclosure statement, the Commission may order that a civil penalty be assessed.
- 14.15 Penalty Imposition: The Commission may assess a civil penalty not to exceed \$40,000 for a knowing and wilful failure to file a required statement. The Commission may consider the following factors in determining the amount of civil penalty assessment:
1. Whether the statement, describing financial interests required to be disclosed by law, has been filed by the hearing date;
 2. Whether the individual has timely filed such statements previously; or
 3. Any other factors of a mitigating or aggravating nature which the Commission may deem relevant.
- 14.16 Notice of Decision and Order: Notice of the Commission's decision shall be mailed to respondent by certified mail, return receipt requested. Subject to Legislative Law

§ 80 (11), the decision of the Commission shall become final upon mailing notice of the decision and order to the respondent. The notice shall also advise the respondent of the right to appeal the decision through article 78 proceeding commenced in New York State Supreme Court.