

ETHICS COMPLAINT PROCEDURES

POLICY NUMBER: GETHC POLICY 3

Effective Date: 12/29/2023

I. GOVERNANCE

Title 4 Guam Code Annotated Chapter 15 §15401(a)(3)

It shall initiate, receive, and consider charges concerning alleged violations of this Chapter, initiate or make investigations, and hold hearings.

§15401(a)(4)

It may subpoena witnesses, administer oaths, and take testimony relating to matters before the Commission and require the production for examination of any books, papers, or electronic records relative to any matter under investigation or in question before the Commission.

Before the Commission shall exercise any of the powers authorized herein with respect to any investigation or hearings, it shall by formal resolution, supported by a vote of five or more members of the Commission, define the nature and scope of its inquiry.

§15405

The Guam Ethics Commission may request and shall receive from every governmental agency cooperation and assistance in the performance of its duties.

§15406

In addition to any provision contained in this Chapter, the Legislature and the Judicial Branch may each prescribe further rules of conduct covering its members and may investigate and discipline its employees for any violation of this Chapter, or its own Rules, or both.

II. APPLICABILITY & JURISDICTION

This policy shall apply to all charges made against a Government of Guam employee or official for violating any provision of law or administrative rule that governs their standards of conduct.

The Commission shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this Chapter in all proceedings commenced within three (3) years of an alleged violation of this Chapter by an employee, or former employee. Nothing herein shall bar proceedings against a person who by fraud or other device prevents discovery of a violation of this Chapter. A proceeding shall be deemed commenced by the signing of a charge by five (5) or more members of the Commission. 4 GCA §15401(a)(6)

III. POLICY

PART 1: FILING OF A COMPLAINT

Charges concerning the violation of this Chapter shall be in writing signed by the person making the charge under oath, except that any charge initiated by the Commission must be signed by five (5) or more members of the Commission. 4 GCA §15401(b)

1.1 Preliminary Intake Appointment and Completing Complaint Form

The Guam Ethics Commission staff shall provide an appointment portal for interested persons to provide their best contact information. Ethics Commission staff shall collect preliminary information regarding their complaint at the scheduled appointment. Staff will review the complaint application form thoroughly with the complainant, expounding on the areas of jurisdiction, while reviewing the complainants obligation to maintain confidentiality and prohibition from filing frivolous complaints.

The filer shall ensure all documents required have been properly filled out, completed, submitted, and notarized (if needed). If no amendments are requested in the draft the filer shall sign the affidavit which shall be countersigned by Commission staff, initiating the review process.

1.2 Prepare Casefile with Collected Information

Commission Staff shall prepare within five (5) business days, a casefile with the information collected. All information will be presented on standard complaint forms approved by the Commission.

All case files shall include:

- a) Summarized overview of the complaint.
 - b) Detailed manuscript of the complaint.
 - c) All documents pertaining to each case.
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- d) Notices and subpoenas served to individuals and agencies involved
 - e) Detailed timeline of case process:
 - i. Date complaint was received by Commission.
 - ii. Board hearing(s) and discussion(s) on case.
 - iii. Dates notices and subpoenas were served.
 - iv. Conclusion of case.

1.3 Casefiles Sent to Prosecutorial Counsel for Review

The Executive Director or their designee will compile the complete complaint case file and transmit a request for work plan with the prosecutorial counsel. Upon receipt and approval of the work plan by the Executive Director, case files are transmitted to the Prosecutorial Counsel for review. Prosecutorial Counsel will prepare review of the complaint based on the testimony collected by the complainant and will make a recommendation for action by the Commission at the Commission's next regular meeting. The recommendation would be to proceed with an investigation or to dismiss the complaint.

1.4 First Review of Complaint by the Commission

At each Commission meeting the Executive Director shall prepare review of cases within the published meeting agenda. The Commission shall have the opportunity to review and discuss cases in a closed proceeding in accordance with 4 GCA §15401. Commission staff shall prepare draft Commission orders to effectuate the action the Commission takes on each case.

1.5 Formal Notification to the Accused

Following the First Review, should the Commission issue an order to proceed with an informal advisory opinion, the Commission shall notify in writing every person against whom a charge is received and afford him an opportunity to explain the conduct alleged to be in violation of this Chapter. 4 GCA §15401(b)

1.6 Launch of Investigation

The Commission may investigate, after compliance with this Section, charges and render an informal advisory opinion to the alleged violator. 4 GCA §15401(b)

1.7 Confidentiality of Cases

The Commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. 4 GCA §15401(b)

Any Commission member or any individual, including the individual making the charge, who without permission of the Commission, divulges information obtained from the Commission or who reveals confidential actions of or what happened in closed proceedings before the Commission concerning the charge prior to the issuance of the complaint or other final action by the Commission, except as permitted by this Chapter, shall be guilty of a misdemeanor.

4 GCA §15401(c)

PART 2: HEARING PROCEDURES

2.1 Procedure Following the Issuance of an Informal Advisory Opinion

If the informal advisory opinion indicates a probable violation, the person charged shall request a formal or within reasonable time comply with the informal advisory opinion. If the person charged fails to comply with such informal advisory opinion or if a majority of the members of the Commission determine that there is a probable cause for belief that a violation of this Chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator in accordance with the rules for personal service found in Guam Rules for Civil Procedure. The person so charged shall have twenty (20) days after service thereof to respond in writing to the charge and statement. 4 GCA §15401(b)

2.2 Procedure to Conduct an Administrative Hearing

If after twenty (20) days following personal service, a majority of the members of the Commission conclude that there is reason to believe that a violation of this Chapter has been committed, then the Commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. 4 GCA §15401(d)

All parties have an opportunity:

- 1) to be heard
- 2) to subpoena witnesses and require the production of an books, papers, records, or electronic recordings relative to the proceedings
- 3) to be represented by counsel; and
- 4) to have the right of cross-examination.

2.3 Witness Testimony and the Accused's Right to an Open Administrative Hearing

All witnesses shall testify under oath and the hearings shall be closed to the public unless the party complained against requests an open hearing. 4 GCA §15401(d)

2.4 Competent and Substantial Evidence

The Commission shall not be bound by the strict rules of evidence, but the Commission's findings must be based upon competent and substantial evidence. 4 GCA §15401(d)

2.5 Hearing Transcripts

All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited into the General Fund. 4 GCA §15401(d)

2.6 Burden of Proof and Closed-door Commission Deliberations

The Commission shall make its findings and render its decision based on a preponderance of the evidence. A decision of the Commission pertaining to the conduct of any employee shall be in writing and signed by five (5) or more of the members of the Commission. Deliberations of the Commission shall be closed to the public and to all parties. 4 GCA §15401(e)

PART 3: VIOLATION OUTCOMES

3.1 Summaries of Decision, Advisory Opinions, and Informal Advisory Opinions

The Commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The Commission shall make sufficient deletions in the summaries to prevent disclosing the identify of persons involved in the decisions or opinions. 4 GCA §15401(f)

3.2 Possible Criminal Violation

When the Commission, after due hearings, believes that there is cause for the possible filing of criminal charges, it shall refer the complaint to the Attorney General's Office or appropriate authority for its disposition. 4 GCA §15403(a)

3.3 Violation Caused by a Former Employee

With respect to former employees, the Commission may, with the consent of five (5) or more members of the Commission, issue a public statement of its findings and conclusions, and the Attorney General may exercise whatever legal or equitable remedies are available to the Territory. 4 GCA §15403(b)

3.4 Violation Caused by a Current Employee

When after due hearing, the Commission finds that the violation committed by an employee is non-criminal in nature, the Commission will remand the case to the agency where the employee is employed with the recommendation that the agency impose the corresponding punishment in accordance with the agency's personnel rules and regulations. 4 GCA §15403(c)

IV. EFFECTIVE DATE

This policy shall be in effect upon the adoption of the Commission at a publicly announced / open meeting and signed by the Chairperson of the Commission

V. AMENDMENTS

The Commission may make any amendments to this policy as it deems necessary, provided that such action be done by an affirmative vote of five (5) members at a publicly announced / open meeting.

 APPROVED AND ADOPTED



CHRISTOPHER A. CRUZ
CHAIRMAN

12/29/2023

Date

Adopted: August 2021

Reviewed and Modified: December 2023