

CHAPTER 10  
EXECUTIVE BRANCH ETHICS COMPLAINT PROCEDURE

**361—10.1(74GA,ch1228) Council authority.** The council has authority to receive, review, and investigate complaints filed by any person alleging a violation of Iowa Code chapter 68B as amended by 1992 Iowa Acts, chapter 1228, by an official, state employee or lobbyist before the executive branch.

**361—10.2(74GA,ch1228) Form and content.** The complaint shall be in writing and signed by the complainant. The complaint shall include the following:

1. The name, address, and telephone number of the complainant.
2. A statement of the facts believed to be true that form the basis of the complaint, including the sources of the information and approximate dates of the acts alleged.
3. A certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge.

A complaint form may be obtained upon request from the office of the secretary to the council.

**361—10.3(74GA,ch1228) Place and time of filing.** The complaint may be delivered personally or by mail to the Office of the Secretary, Executive Council, Capitol Building, Des Moines, Iowa 50319. The complaint shall be filed within three years of the occurrence of the conduct providing the basis of the complaint.

**361—10.4(17A,22,74GA,ch1228) Confidentiality.**

**10.4(1)** A complaint shall be kept confidential by the council unless the complainant or the person against whom a complaint has been filed discloses the existence of a complaint. Upon disclosure by the complainant or alleged violator, the council shall confirm the existence of the complaint and preliminary investigation. The council also may make public the complaint and any documents issued to the complainant and the alleged violator.

**10.4(2)** Unless otherwise provided in these rules or by law, all records and proceedings relating to an ethics complaint filed under these provisions shall be public.

**361—10.5(74GA,ch1228) Formal sufficiency and validity.** The council shall, within 20 days of receipt of a complaint, review the complaint to determine whether it meets the requirements for formal sufficiency and validity. A complaint determined to be deficient as to form shall be returned to the complainant with a statement of the nature of the deficiency. If a complaint is determined to be formally sufficient, the council shall make a determination as to its validity. To be valid, a complaint must allege all of the following:

1. Facts, which if true, establish a violation of a provision of Iowa Code chapter 68B as amended by 1992 Iowa Acts, chapter 1228, for which penalties or other remedies are provided;
2. The conduct providing the basis of the complaint occurred within three years of the filing of the complaint;
3. The party against whom the complaint has been filed is subject to the jurisdiction of the council.

**361—10.6(74GA,ch1228) Determination of validity.**

**10.6(1) Dismissal.** A complaint determined to be not valid shall be dismissed. Notice of the dismissal stating the reason(s) for the dismissal shall be provided to the complainant and the alleged violator.

**10.6(2) Appointment of special counsel.** If a complaint is determined to be valid, the council shall request the chief justice of the supreme court to appoint special counsel to investigate the allegations of the complaint to determine whether probable cause exists to believe that a violation has occurred and whether an evidentiary hearing should be held. The special counsel may subpoena witnesses, books, papers, records or other real evidence during the course of the investigation which may assist in determining whether a violation of Iowa Code chapter 68B as amended by 1992 Iowa Acts, chapter 1228, has occurred.

**10.6(3) Report to council.** Upon completion of the investigation, the special counsel shall prepare a written report to the council stating whether there is probable cause to proceed with an evidentiary hearing on the matter.

**361—10.7(74GA,ch1228) Order for hearing.** The council shall order an evidentiary hearing to be held following a determination of probable cause.

**361—10.8(17A,74GA,ch1228) Notice of hearing.**

**10.8(1) Service.** A written notice of the hearing with a statement of the charges shall be served personally or delivered by registered mail to the last known address of the alleged violator at least 30 days prior to the date of the hearing. “Registered mail” means that form of postal delivery, under postal regulations in effect at the time of service, which ensures that a mailing receipt and a record of delivery are obtained. “Registered mail” does not mean that form of postal delivery which provides only for protection against loss or damage, and does not ensure that a receipt of delivery is obtained.

**10.8(2) Contents of notice.** The notice of hearing shall include:

1. The date, time, and place of hearing.
2. A short and plain statement of charges which alleges a violation of Iowa Code chapter 68B as amended by 1992 Iowa Acts, chapter 1228.
3. A statement of the council’s legal authority and jurisdiction.
4. A reference to the statutes and rules involved.
5. A statement that the alleged violator has a right to appear at the hearing and be heard.
6. A statement that the alleged violator may be represented by legal counsel at the hearing.
7. A statement requiring the alleged violator to submit an answer within 20 days after receipt of the notice of the hearing.

**361—10.9(17A,74GA,ch1228) Answer.** The answer to the notice of hearing shall include:

1. The name, address, and telephone number of the alleged violator.
2. Specific statements in response to the allegations in the statement of charges which shall be in the form of admissions, denials, explanations or statements of mitigating circumstances.
3. Any additional facts or information which are relevant to the statement of charges.

**361—10.10(74GA,ch1228) Extensions of time.** Upon request and mutual agreement of both parties, an alternate date may be set for hearing. Such a request may be made no later than seven days prior to the date set for hearing.

**10.10(1)** Requests by either party for an extension of time within seven days of the date set for hearing shall be granted only upon a showing of extraordinary, extenuating, or emergency circumstances.

**10.10(2)** If a request for an extension of time is made after three months from the date of the filing of the complaint, the request may be granted by the council only if the party charged with the violation consents.

**361—10.11(17A,74GA,ch1228) Informal settlement.** Settlement negotiations may be initiated by the council or either party after a statement of charges is filed.

**10.11(1)** The council may designate the independent special counsel appointed by the chief justice of the supreme court to negotiate a settlement on behalf of the council.

**10.11(2)** The council shall not be involved in the negotiations until a written settlement signed by the alleged violator is submitted to the council for approval. A negotiated settlement shall be binding on the alleged violator only upon approval by a majority of the members of the council.

**10.11(3)** The terms of any negotiated settlement shall be publicly recorded.

**361—10.12(74GA,ch1228) Timeliness of hearings.** Every effort shall be made to have a complaint heard within three months of the date the complaint is filed with the council. If a complaint is filed or initiated less than 90 days prior to the election for state office for which the person named in the

complaint is the incumbent officeholder, the hearing shall be set at the earliest available date so as to allow the issues to be resolved before the election.

**361—10.13(17A,74GA,ch1228) Hearing and evidence.**

**10.13(1)** The hearing shall be conducted by an administrative law judge of the department of inspections and appeals in the manner provided in Iowa Code section 17A.12 and rules 481—10.20(17A), 481—10.22(17A) to 10.24(10A,17A), Iowa Administrative Code.

**10.13(2)** Evidence shall be admitted as provided in Iowa Code section 17A.14 and rule 481—10.21(17A), Iowa Administrative Code. A finding that a violation has occurred must be supported by a preponderance of clear and convincing evidence.

**10.13(3)** The independent special counsel shall prosecute the complaint on behalf of the council.

**361—10.14(74GA,ch1228) Notification of decision.** A proposed decision and order shall be issued by the administrative law judge within 30 days of the conclusion of the hearing on the complaint. The proposed decision and order shall be mailed by registered mail to all parties to the complaint and the complainant. Copies shall be provided to the members of the council.

**361—10.15(17A,74GA,ch1228) Appeal.** The proposed decision and order of the administrative law judge becomes the final decision of the council unless appealed by any party to the complaint within 15 days of its issuance. An appeal of a proposed decision and order shall be filed in writing and delivered personally or mailed to the Secretary, Executive Council, State Capitol, Des Moines, Iowa 50319.

**10.15(1)** The council, on its own motion, may review a proposed decision and order by serving notice to the parties within 15 days of its issuance. The record on appeal shall be the entire record made before the administrative law judge.

**10.15(2)** Oral argument on appeal is discretionary with the council and may be granted if requested by any party to the appeal or required by the council on its own motion. The final decision of the council shall be mailed to all parties by registered mail.

**361—10.16(17A,74GA,ch1228) Motion for rehearing.** Within 20 days after issuance of a final decision, any party may file an application for rehearing. An application for rehearing shall be delivered personally or mailed to the Secretary, Executive Council, State Capitol, Des Moines, Iowa 50319.

**10.16(1)** The application shall state the specific grounds for rehearing and the relief sought. Copies of the application shall be timely mailed to all other parties.

**10.16(2)** The application shall be deemed denied if not granted within 20 days after delivered personally or mailed to the secretary of the council.

**10.16(3)** Upon rehearing, the council shall consider facts not presented in the original proceeding if:

- a. Such facts arose after the original proceeding concluded;
- b. The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or
- c. The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

The decision made upon rehearing may incorporate by reference all parts of the decision made upon the conclusion of the original proceeding.

**361—10.17(17A,74GA,ch1228) Judicial review.** Judicial review of the council's decision may be sought as provided in Iowa Code section 17A.19.

**361—10.18(17A,74GA,ch1228) Decision and order.** Any proposed or final decision on a complaint filed pursuant to these provisions shall be in writing and shall include:

1. A concise statement of the facts which support the findings of fact.
2. Conclusions of law which shall be supported by cited authority or reasoned opinion.
3. The decision or order which sets forth the action to be taken or the disposition of the case.

**361—10.19(74GA,ch1228) Disciplinary action.** If the party charged has engaged in an act or practice which violates Iowa Code chapter 68B as amended by 1992 Iowa Acts, chapter 1228, the decision and order shall include a recommendation to the agency in which party is an official, employee or lobbyist of the appropriate action to take with respect to the party.

These rules are intended to implement 1992 Iowa Acts, chapter 1228, sections 14, 15 and 16.

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