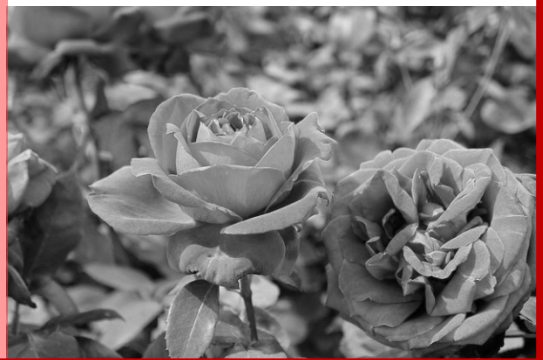


2018-2019 Enforcement and Compliance Guide



Oklahoma Ethics Commission
FAIR RULES. FIRM ENFORCEMENT.



"This publication is issued by the Oklahoma Ethics Commission as authorized by Executive Director, Ashley Kemp, pursuant to Ethics Rule 1.8, and is located at the following website: <http://www.ethics.ok.gov>. This publication has been submitted in compliance with Section 3-114 of Title 65 of the Oklahoma Statutes." Guides are updated annually in July. This Guide was updated on **July 1, 2018.**

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Commissioners

- **John Hawkins** – appointed by Senate President Pro Tempore Brian Bingman, term expires July 2019
- **Karen Long** – re-appointed by Speaker of the House Jeff Hickman, term expires July 2019
- **Holly Johnson** – appointed by Chief Justice John Reif of the Oklahoma Supreme Court, term expires July 2021
- **Cathy Stocker** – re-appointed by Attorney General Mike Hunter, term expires July 2022
- **Charles Laster** – appointed by Governor Mary Fallin, term expires July 2022

I. Introduction

How to Use This Guide

This Guide summarizes Rules of the Oklahoma Ethics Commission regarding enforcement and compliance, effective July 1, 2018. It is written by the Commission staff to assist with understanding the procedures for investigating and prosecuting alleged violations as provided by [Rule 6.1](#).

This Guide is not a substitute for the law. If there is a conflict between this Guide and the Constitution, statutes or Rules, then the Constitution, statutes or Rules prevail.

Limited Scope

This Guide is not intended to provide comprehensive information about all Ethics Rules and other relevant law concerning enforcement, complaints, complaints and investigations. Individuals who are interested in the Commission's procedures should consult the Constitutional and statutory provisions, as well as with the Ethics Rules.

Advisory Opinions

[Rule 1.7](#) authorizes the Commission to issue official advisory opinions interpreting its Rules. Such advisory opinions are binding on the Commission. Ordinarily, the Commission will consider an advisory opinion only as it applies to the person requesting the opinion, rather than third parties. Requests for advisory opinions may be sent to the Oklahoma Ethics Commission.

Commission Website

Additional information regarding compliance with the Rules may be found on the Commission's website at www.ethics.ok.gov. The Ethics Rules are available on the Ethics website under the "Ethics Laws, Guides & Forms" tab.

Contacting the Commission

The Ethics Commission office is located in Room G-27 of the State Capitol. The Commission's hours are Monday through Friday from 8:30 a.m. to 5:00 p.m.

- Address: Oklahoma Ethics Commission
2300 N. Lincoln Blvd., Room G-27
Oklahoma City, OK 73105
- Phone: (405) 521-3451
- Fax: (405) 521-4905
- Email: ethics@ethics.ok.gov

Information regarding the Commissioners, the Ethics Commission staff, and the Commission meeting agendas and minutes may be located on the Commission's Internet website at www.ethics.ok.gov.

II. Ethics Resources

Ethics Rules and Guides

The Ethics Commission provides the text of its Rules and relevant Guides on its website at www.ethics.ok.gov. The Guides provide an overview on the Rules to assist in compliance with the rules. The Ethics Laws and Guides are available under the "Ethics Laws, Guides and Forms" tab on the Ethics website.

Ethics Continuing Education Programs

The Ethics Commission also holds several continuing education programs to assist with the understanding of and compliance with the Ethics Rules. More information regarding the continuing education opportunities is available on the Ethics website under the "Agency Information & Continuing Education" tab.

Ethics Questions of the Week

In addition, the Ethics Commission frequently posts a "Question of the Week" on its homepage. These tips provide answers to frequently asked questions.

III. The Ethics Commission's Enforcement Responsibilities

[Okla. Const. art. XXIX, § 3](#) requires the Oklahoma Ethics Commission to promulgate rules of ethical conduct for campaigns for elective state office and rules of ethical conduct for state officers and employees, which includes setting civil penalties for violation of these rules. [Okla. Const. art. XXIX, § 3](#). The Ethics Commission also has enforceable authority over ethical conduct for counties, municipalities and school districts under [74 O.S. §4262](#). [Okla. Const. art XXIX, §4\(B\)](#).

Ethics Rule 6 sets out the procedures for investigating and prosecuting violations of these rules, as provided by [Okla. Const. art. XXIX, §4, Rule 6.1](#). The Ethics Commission has the authority to investigate possible violations of the Rules and enforce its Rules by civil lawsuit or settlement

agreements. [Okla. Const. art. XXIX, §4](#). The Executive Director is also authorized to issue compliance orders for compliance fees to obtain compliance with these rules. [Rule 6.19](#).

Ethics Commission Enforcement Limited to Civil Actions

The Ethics Commission's enforcement authority is limited to civil actions. However, there are certain situations where a violation of an Ethics Rule or Rules will also be a violation of the Criminal Code.

The following are Ethics Rules that have corresponding provisions in the Criminal Code:

- **Cannot Exceed Contribution Limits.** No person may contribute more than the contribution limits as provided by the Ethics Commission Rules, and no committee may accept more than the contribution limits as provided by the Ethics Commission Rules. [21 O.S. 187.1](#); [Rule 2.37](#); [2.31](#); [2.32](#); [2.33](#); [2.34](#); [2.38](#).
- **Corporation and Labor Union Contributions Prohibited.** Corporations and labor unions are prohibited from making contributions to a political party, a limited political action committee (PAC), or a candidate committee, unless permitted by the law or the Ethics Rules. No political party, limited PAC, or candidate committee may accept a contribution from a corporation or labor union, unless permitted by the law or the Ethics Rules. [21 O.S. §187.2\(A\)\(1\) & \(B\)](#); [Rule 2.23](#).
- **Incorporated LLC Member Contributions Prohibited.** A limited liability company (LLC) with one or more incorporated members is prohibited from making a contribution to a political party, a PAC or a candidate committee. [21 O.S. 187.2 \(A\)\(2\)](#); [Rule 2.24](#).
- **Incorporated Partner/Partnership Contributions Prohibited.** A partnership with one or more incorporated partners is prohibited from making a contribution to a political party, a PAC or a candidate committee. [21 O.S. 187.2\(A\)\(3\)](#); [Rule 2.25](#).

Another important rule relating to elections under the Criminal Code to remember is the following:

- **Lobbyist and Lobbyist Principal Contribution “Blackout” Period.** No lobbyist or lobbyist principal may make or promise to make a campaign contribution to, or solicit or promise to solicit a contribution for a member of the Legislature or a candidate for state legislative office during any regular legislative session, beginning the first Monday in February, through its adjournment and for five calendar days following sine die adjournment. A member of the Legislature or a candidate for state legislative office may not intentionally solicit or accept a contribution from a lobbyist or lobbyist principal during the same time period. [21 O.S. §187.1](#).

A complaint solely alleging a criminal violation should be directed to the Attorney General or District Attorney for criminal complaints. Complaints regarding the ethical conduct of Oklahoma attorneys should be referred to the Oklahoma Bar Association. The Ethics Commission will only enforce its own Rules.

The Commission may refer any information received in a complaint or in a formal investigation to the appropriate civil or criminal authorities with whom the Commission works cooperatively. For

instance, the Commission may provide relevant information received to the District Attorney's Office or the Attorney General's office regarding a criminal violation. [Rule 6.11.](#)

IV. Compliance Orders

The Executive Director is authorized to issue compliance orders for those in violation of the Ethics Rules in order to obtain compliance. Compliance orders include (1) non-monetary orders, such as amending a report; or (2) compliance fees, such as late filing fees. Monetary compliance orders will not exceed \$1,000 per violation.

a. Late Filing Fees Are Published on Ethics Website

Compliance fees, including late filing fees, are issued in writing via email through The Guardian System and/or mail. [Rule 6.19.](#) Late filing fees are also published on the Ethics Commission website.

b. Late Filing Fees are Separate from Other Litigation Costs, Penalties or Fees

Late filing fees are assessed separately from any other costs, penalties or fees provided by the Ethics Rules. This means that subsequent assessments for the same violation may result in penalties that are separate from late filing fees. In other words, if a late filer pays his or her late filing fee, it will not necessarily prevent subsequent assessments.

c. Option to Request an Administrative Hearing

Those affected by a compliance order may request a hearing before an administrative law judge (ALJ). A hearing request form will be provided with the proposed compliance order. The hearing request form must be signed and returned to the Ethics Commission before the date specified in order to request a hearing.

Once the Commission receives the hearing request, the Ethics staff will send a notice regarding the hearing to the person requesting the hearing (requestor). This notice will include information on the hearing, such as the date and time of the hearing and the timeframe in which the requestor is required to submit statements or evidence for the hearing.

The requestor may submit documents and statements to support their claim for consideration by the administrative law judge. Those who are unable to attend the hearing may submit a written statement for consideration by the administrative law judge. If the requestor neither attends the hearing, nor provides a written statement, then the compliance order will be affirmed by the administrative law judge.

The hearings will be conducted by an administrative law judge under applicable provisions of the Administrative Procedure Act or its successor statutes. These hearings are open to the public.

At the hearing, the ALJ may set aside or modify the compliance order if good cause is shown. Otherwise, the ALJ will affirm the order.

After the hearing, the Executive Director will issue a final order. The final order may be appealed to the District Court of Oklahoma. [Rule 6.19.](#)

d. Final Orders

Proposed orders will become final thirty (30) days after the date on the proposed compliance order if corrective action or an Administrative hearing is not timely requested. Final orders may be enforced by the Commission in District Court.

V. Complaints

What Is a Complaint?

A complaint is an allegation of a violation of the Ethics Rules. [Rule 6.2](#). If an individual submits a complaint to the Ethics Commission, that complaint must refer only to the Rules enforced by the Ethics Commission. All of the Ethics Rules and relevant Guides are accessible on the Ethics website at www.ethics.ok.gov under the “Ethics Laws, Guides, and Forms tab.”

Who May File a Complaint?

Anyone can file a complaint with the Ethics Commission provided it is not from an anonymous source. An individual filing a complaint must follow the procedures outlined in the Ethics Rules for the complaint to be accepted by the Commission. [Rule 6.3\(A\) & \(B\)](#). This helps the Commission establish the legitimacy of the complaint, provides a contact if questions arise, and prevents abuse of the complaint process.

Anyone, other than a Commissioner or Commission staff, must follow the procedures outlined by the Ethics Rules for a complaint to be accepted by the Commission. [Rule 6.3\(B\)](#).

a. Complaints Are Confidential

Complaints are confidential. Under the Rules, the Commission may determine that a complaint should be made public. [Rule 6.9](#). The Commission typically will not make a complaint public.

b. Filing a Compliant Submits the Filer to Ethics Commission Jurisdiction

Anyone who submits a complaint with the Commission will automatically submit themselves to the jurisdiction of the Ethics Commission. This means that the individual submitting a complaint with the Ethics Commission is certifying that he or she has personal knowledge of the facts alleged in the complaint. It also means that if the complaint is deemed to be a frivolous complaint, the individual who submitted the complaint will be in violation of the Ethics Rules. [Rule 6.3\(B\)](#).

c. Frivolous Complaints

Frivolous complaints submitted to the Ethics Commission are a violation of the Ethics Rules. A frivolous complaint is a complaint that is (1) knowingly asserted in bad faith; (2) unsupported by any credible evidence; (3) not grounded in fact; or (4) unwarranted by existing law. [Rule 6.3\(B\)](#).

Information Required in a Complaint

a. Must Include Name of Person Filing Complaint

The Ethics Commission ***will not accept anonymous complaints***. An individual who files a complaint needs to include his or her name upon filing the complaint. [Rule 6.3\(B\)](#).

b. Must Include Ethics Rule(s) and a Description of Alleged Violation(s)

A person filing a complaint with the Ethics Commission must cite the Ethics Rule(s) that have allegedly been violated. Further, the complaint must contain a detailed description of the violation and the names of those involved with the alleged violation.

c. Personal Knowledge Certification

A person who files a complaint must certify that he or she has ***personal knowledge*** of the facts alleged.

For more information, the Ethics Rules and Guides are available on Ethics Commission website at www.ethics.ok.gov under the “Ethics Laws, Guides and Forms” tab.

How to File a Written Complaint

A written complaint may be submitted in one of the following ways:

- Email the complaint to ethics@ethics.ok.gov.
- Mail or deliver a hard copy of the complaint to the Oklahoma Ethics Commission at 2300 N. Lincoln Blvd, Oklahoma City, OK 73105, Room G-27 (State Capitol)
- Fax the complaint to (405) 521-4905

A complaint may **not** be submitted via telephone. ***Only written complaints will be accepted.*** [Rule 6.3\(B\)](#).

a. Complaints Will Not be Accepted During the “Blackout Period”

The Commission will not accept complaints that allege a candidate or a candidate committee violated the Ethics Rules during an election cycle. This complaint “blackout period” begins during the candidate filing period. Specifically, the blackout period begins the first day that the State Election Board accepts Declarations of Candidacy, and it ends on the last day of the General Election during the same year. This provision is intended to prevent the complaint process from being used for political purposes during a campaign.

The blackout period does not prevent the Commission from engaging in investigation. [Rule 6.4](#).

What Happens After a Complaint Is Filed?

The Commission may take the following actions after a complaint is filed:

a. Preliminary Investigation of a Complaint

Once a properly submitted complaint is received, the Executive Director or an authorized Ethics staff member may conduct a preliminary inquiry into the allegations of the complaint. This initial investigation is not a formal investigation, but it will determine the merits of the complaint and assist the Commission in deciding whether to begin a formal investigation. [Rule 6.5](#).

b. Commission Review of a Complaint or Preliminary Investigation

The Executive Director, the General Counsel, or an authorized Ethics staff member must advise the Commission of a complaint received and the results of any preliminary investigation on that complaint. This advice ensures the Commission is informed on the matter and will assist the Commission in deciding whether to begin a formal investigation.

Further, the Executive Director or authorized staff member may advise the Commission on any alleged violations based on Ethics staff review of registrations, reports and statements that are filed with the Ethics Commission. [Rule 6.6.](#)

After review, the Commissioners will decide whether to dismiss the complaint, open a formal investigation, or take no action.

c. Formal Investigation

If the Commission finds reasonable cause to believe that there is a violation of the Ethics Rules, it may authorize a formal investigation. [Rule 6.7.](#) Reasonable cause, also known as probable cause, means that there is a reasonable belief that the existing facts support the claim. In other words, there is reason to believe that there may be an ethics violation based on the facts provided, and thus, a formal investigation needs to be conducted to determine whether a violation indeed exists. [Rule 6.7.](#)

i. Formal Investigation Triggers Subpoena Power

When the Commission authorizes a formal investigation, the Executive Director or authorized Commission employee is automatically able to exercise subpoena power, pursuant to Article XXIX, Section 4 of the Oklahoma Constitution. [Rule 6.8.](#)

ii. Notice and Opportunity to be Heard

Any person that is accused of an Ethics Rule violation will be afforded significant procedural protection. The Commission cannot authorize the prosecution of a civil lawsuit in the District Court until any person who is alleged to have violated these Rules has had an opportunity to respond in writing to the allegations of any violation.

The Commission will provide notice of the allegations and provide 20 days to file a written response with the Ethics Commission. An extension may be requested one time. The extension will allow for an additional 20 days to respond. Any additional response will be granted at the exclusive direction of the Commission. Failure to respond to a notice of an alleged violation from the Ethics Commission within the 20 day period will be deemed an admission of the allegations.

The person who is allegedly in violation of the Ethics Rules and his or her representing attorney will be granted an opportunity to personally appear before the Commission to make an oral response, provided the response is within the time frame provided for a written response. [Rule 6.10.](#)

iii. Commission Action During Formal Investigation

The Ethics Commission may, at any time during a formal investigation, perform one of the following actions:

1. Terminate the investigation and take no further action;
2. Authorize the Executive Director to prosecute the alleged violation through a civil action in District Court; or
3. Offer a settlement agreement.
4. Refer to Appropriate Civil or Criminal Law Enforcement Authorities ([Rule 6.11](#))

If the formal investigation has not concluded by the time the Commission issues prosecutorial or settlement agreement authority, the Commission may continue the investigation. Also, termination of a formal investigation will not bar reopening an investigation on the same complaint if new evidence is discovered or for other good cause. [Rule 6.10](#).

iv. Confidentiality During Formal Investigation

All formal investigations and any documents or discussion involved in formal investigations are confidential. However, the Commission may make any complaint or investigation public when the Commission deems it to be in the public interest. [Rule 6.9](#).

VI. Violation of the Rules, Penalties and Fees

Once the Commission determines that an Ethics Rule violation has occurred, the Commission may authorize the Executive Director to enter into a settlement agreement or file a civil lawsuit.

Settlement Agreements

At any time during or at the closing of a formal investigation, the Commission may, but is not required to, offer to settle alleged violations of the Ethics Rules. [Rule 6.10 \(2\)](#). The Commission and any respondents may reach a settlement agreement on terms agreed to by the parties. This may include, but is not limited to, an agreement to take certain actions, refrain from certain actions, pay a monetary penalty, or any combination of those options. [Rule 6.18](#). If an agreement is not reached, the Commission may then authorize prosecution in the District Court. [Rule 6.10\(3\)](#).

Settlement agreements are public record and will be published on the Ethics Commission website. Settlement agreements are published to deter individuals and other entities from engaging in similar conduct, provide educational services to the public, and coincide with public transparency interests. [Rule 6.9](#).

Any monetary penalties are paid to the general revenue fund of the state. [257 O.S. § 1-1-11\(c\)](#).

Violations of the Rules May Result in Civil Lawsuits

The Commission may file a civil lawsuit in the District Court against persons who have allegedly violated the Ethics Rules. [Rule 6.10\(2\)](#).

There is a four year statute of limitations. The Commission cannot file a civil lawsuit more than four years from the date a report was required to be filed or the date a report was in fact filed, whichever period expires later. Specifically, the Commission generally cannot file a civil lawsuit more than four years after the date of violation of the Ethics Rules.

Example 1: If an individual violated an Ethics Rule on January 1, 2016, then the Ethics Commission cannot file a civil lawsuit on January 2, 2020.

Example 2: If committee X had a report due with the Ethics Commission on April 30, 2016, but committee X did not file the report until May 30, 2016, the Ethics Commission could file a civil suit against committee X, assuming it violated an Ethics Rule, no later than May 30, 2020.

However, the statute of limitations does not apply if fraud or concealment prevents discovery of the alleged violation. [Rule 6.12](#) & [6.10](#).

a. Monetary Penalties May be Assessed for Violations of the Rules

If the District Court concludes that there is a violation of an Ethics Rule or Rules, it may assess monetary penalties for the violation(s). The monetary penalties that the District Court may assess for Ethics violation(s) are as follows:

- **\$5,000 - \$25,000** for **one violation** of the Ethics Rules;
- **\$10,000 - \$50,000** for **multiple** Ethics Rule violations; and
- **\$25,000 - \$100,000** for a **subsequent violation** of any Rule. [Rule 6.13](#).

It is important to note that the monetary penalties increase in severity for persons who violate the Ethics Rules more than one time.

b. Other Penalties May be Assessed for Violations of the Rules

The District Court may also decide that other remedies are appropriate *in addition to* the monetary penalties. These other remedies may include the following:

- Restitution;
- Disgorgement of things of value received as a result of violation of the Rules; and
- An additional monetary penalty of up to three times the amount of an unlawful campaign contribution.

c. Monetary Liability for Violation of Other Rule(s)

Once a violation of the Ethics Commission ***financial disclosure, conflict of interest or lobbying Rule(s)*** is found, the District Court will decide the liability for payment of monetary penalty, fees, costs and other expenses of litigation assessed. [Rule 6.16](#).

d. Liability Is Assessed Per Person

The District Court will separately assess monetary penalties for each person found liable. This ensures that a violator is only liable for his or her own liability, not for that of other persons. [Rule 6.17.](#)

e. Payment of Penalties and Costs

Payment of penalties, fees, costs and other expenses of litigation may be paid as follows:

- **PAC** – From the PAC’s funds, PAC officers, or both, as determined by the court
- **Affiliated PAC** – From the entity with which the PAC is affiliated, officers of the PAC, or both, as determined by the court
- **Unaffiliated PAC** – From PAC funds, PAC officers, or both, as determined by the court
- **Candidate or Candidate Committee** – From campaign funds of candidate or candidate committee, officers of the candidate committee, candidate funds other than campaign funds, or any combination thereof, as determined by the court.

Penalties are paid to the general revenue fund of the state. [257 O.S. § 1-1-11\(c\).](#)

Attorneys Fees, Costs and Other Expenses

The District Court will order the payment of the Commission’s attorney’s fees, costs and other expenses of litigation from those persons found to have violated an Ethics Rules or Rules. [Rule 6.14.](#)