2 KAR 2:050. Preliminary inquiries.

RELATES TO: KRS 6.611, 6.666, 6.686
STATUTORY AUTHORITY: KRS 6.666(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 6.666(5) requires the commission to promulgate administrative regulations necessary to implement KRS 6.601 through 6.849. KRS 6.686 requires the commission to conduct a preliminary inquiry into any alleged violation of KRS 6.601 through 6.849. This administrative regulation establishes the requirements governing the preliminary inquiry proceedings of the commission.

Section 1. Definitions.
(1) "Commission" is defined by KRS 6.611(9).
(2) "Complainant" means a person who has filed a complaint with the commission.
(3) "Complaint" means a formal, written complaint filed in accordance with KRS 6.686 that accuses one (1) or more persons of violating a provision of KRS 6.601 to 6.849.
(4) "Enforcement counsel" means the attorney employed by the commission to investigate and prosecute a complaint.
(5) "Respondent" means a person accused in a complaint of violating any of the provisions of KRS 6.601 to 6.849.

Section 2. Complaint.
(1) A complaint may be filed by any person in accordance with the requirements of KRS 6.686(1).
(2) A person may file a complaint by completing and signing the commission's complaint form or by filing a written, sworn complaint in another form that complies with the requirements of KRS 6.686(1).
(3) The complainant shall not be considered a party to the action, although he or she may be a witness.
(4) The commission shall dismiss a complaint in accordance with KRS 6.686(1)(d) or 6.686(4).

Section 3. Preliminary Inquiry and Hearing.
(1) A preliminary inquiry shall be commenced as required by KRS 6.686(1)(d).
(2) The enforcement counsel:
(a) May be assisted by investigators employed by the commission;
(b) Shall investigate the complaint for the purpose of presenting the facts to the commission; and
(c) Shall present information and recommendations to the commission about the allegations in the complaint.
(3) After the enforcement counsel's investigation is complete, the commission shall consider the results of the enforcement counsel's investigation and shall vote to:
(a) Dismiss the complaint in accordance with KRS 6.686(1)(d) or 6.686(4); or
(b) Conduct a preliminary inquiry hearing to determine if probable cause exists to believe there has been a violation of KRS 6.601 to 6.849.
(4) If the commission decides to conduct a preliminary inquiry hearing, the chair shall:
(a) Set a date for the preliminary inquiry hearing; and
(b) Notify the respondent of the time and place of the hearing.

Section 4. Hearing Proceedings.
(1) As required by KRS 6.686(2), during the preliminary inquiry hearing, only the commission members, the commission staff, enforcement counsel, the commission's investigator, the respondent, the respondent's counsel, and any witness called to testify may be present.

(2) The Kentucky Rules of Civil Procedure and Kentucky Rules of Evidence shall not apply at the preliminary inquiry hearing. The chair, or other member of the commission appointed by the chair, shall:

(a) Conduct the hearing; and

(b) Allow or exclude evidence within his or her discretion and in accordance with KRS 6.686(3).

(3) The commission may compel the attendance of witnesses at the preliminary inquiry hearing in accordance with KRS 6.666.

(4) All testimony taken at the preliminary inquiry hearing shall be under oath.

(5) The enforcement counsel shall call witnesses and question them concerning the allegations in the complaint, and the complainant shall be given an opportunity to testify. The members of the commission may ask questions of the witnesses and complainant. The commission may allow the respondent to cross-examine the witnesses and the complainant.

(6) Following the presentation of evidence by the enforcement counsel, the respondent shall be given the opportunity to testify under oath and to present evidence on his or her behalf.

(7) Following the presentation of evidence by the enforcement counsel and respondent, the commission may allow the enforcement counsel and respondent to present statements to the commission concerning the disposition of the complaint.

(8) At the conclusion of the evidence and statements, the commission shall meet in executive session to deliberate on the question of whether there is probable cause to believe a violation has occurred.

(9) The witnesses, the complainant, the respondent, and the respondent's attorney shall not be present during the deliberations.

(10) In accordance with KRS 6.686(5), at the conclusion of the preliminary inquiry hearing, the commission may dismiss the complaint, issue a confidential reprimand, or initiate an adjudicatory proceeding.

Section 5. Incorporation by Reference.

(1) "Complaint", 10/16, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

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