

PROPOSED

ACCOUNTABILITY, CONDUCT

AND ETHICS CODE

FOR

LUZERNE COUNTY, PENNSYLVANIA

DRAFT

**COUNTY OF LUZERNE
ACCOUNTABILITY, CONDUCT, AND ETHICS CODE**

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CHAPTER 101 – DEFINITIONS AND CONSTRUCTION

Section 101.01 Short Title

This Code and all amendments hereto shall be known and may be cited as “The Accountability, Conduct and Ethics Code of Luzerne County” or the “Ethics Code.”

Section 101.02 Purpose

A. The purpose of this Accountability, Conduct and Ethics Code is to set forth the details for the accountability, conduct and ethics of Luzerne County (County) government consistent with the provisions of the Home Rule Charter of Luzerne County as adopted on November 2, 2010 and all applicable laws of the Commonwealth of Pennsylvania.

B. Luzerne County’s elected and chief appointed officials set the ethical tone and environment that will prevail in the County. It is the special obligation of these officials to set the example of proper comportment, to communicate to all County personnel the ethical conduct that is expected, and to hold supervisors accountable for the enforcement of this Accountability, Conduct, and Ethics Code.

Section 101.03 Definitions

The following words and phrases, in addition to all words and phrases otherwise defined by the Administrative Code or Charter, when used in Ethics Code shall have the meaning given to them in this Section:

“Authority of Office or Employment.” The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

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Section 101.03 Definitions (continued)

"Business." Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

"Business with which he/she is associated." Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

"Candidate." Any person seeking an elected public office, who has filed the required nominating petitions with the appropriate Board of Elections, or in the case of a special election, has received the nomination of his or her respective nominating party. The term shall include individuals nominated or elected as write-in candidates unless they resign such nomination or elected office within 30 days of having been nominated or elected.

"Commission" or "ACE Commission." The Accountability, Conduct and Ethics Commission.

"Confidential Information." Information that is acquired in the course of official duties which is not available as a matter of public knowledge or public record or is not available by making inquiry to a publicly available source of information.

"Conflict" or "Conflict of Interest." Use by a covered person of the authority of his/her office or employment or any confidential information received through his or her holding public office or employment for the benefit of himself or herself, a member of his or her immediate family or a business or organization with which he/she or a member of his or her immediate family is associated.

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Section 101.03 Definitions (continued)

“Contract.” An agreement or arrangement for the acquisition, use or disposal by the County of consulting or other services or of supplies, materials, equipment, land or other personal or real property. The term shall not mean an agreement or arrangement between the County as one party and a public official or public employee as the other party, concerning his or her expense, reimbursement, salary, wage, retirement or other benefit, tenure or other matters in consideration of his or her current public employment with the County.

“Covered Persons.” All elected and appointed County Officials, all County employees and members of County Agencies, Authorities, Boards, and Commissions.

“Financial Interest.” Any financial interest in a legal entity engaged in business for profit, which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness

“Gift.” Anything that is received without consideration of equal or greater value. The term shall not include a political contribution otherwise reported as required by law or a commercially reasonable loan made in the ordinary course of business.

“Honorarium.” Payment made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature..

“Income.” Any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain,

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Section 101.03 Definitions (continued)

reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination or withdrawal there from upon assumption of public office or employment or any other form of recompense or any combination thereof. The term refers to gross income and includes prize winnings and tax- exempt income. The term does not include gifts, governmentally mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee or miscellaneous, incidental income of minor dependent children.

“Ministerial Action.” An action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of the person’s own judgment as to the desirability of the action being taken.

“Nominee.” Any person whose name has been submitted to a covered person (covered or governmental body vested with the power to finally confirm or reject proposed appointments to public office or employment.

“Non-Ministerial Actions.” An action in which the person exercises his or her own judgment as to the desirability of the action taken.

“Political contribution.” Any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, purchase of a ticket to a testimonial or similar fund- raising affair, or subscription of money or anything of value, except volunteer services, in connection with a political campaign or for any partisan political purpose, and any contract, agreement, promise or other obligations, whether or not legally enforceable, to make a political contribution.

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Section 101.03 Definitions (continued)

“Represent.” To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

For further reference please see Luzerne County Personnel code

Section 101.04 Rules of Construction

For the purposes of this Accountability, Conduct and Ethics Code, the following rules of construction shall be observed unless otherwise provided in this Code and unless the context clearly indicates otherwise and unless the application of such rules would result in a construction inconsistent with the manifest intent of Council:

- A. “Shall” is mandatory and “May” is permissive.
- B. The singular includes the plural, and the plural includes the singular. Words used in the masculine gender include the feminine and neuter. Words used in the past or present tense include the future.
- C. The arrangement and classification of the Code have been made for the purpose of a convenient and orderly arrangement. No inference, implication or presumption of legislative construction shall be drawn because of the location of any provision, nor shall any outline, analysis, index or descriptive matter relating to the contents of the Code be given any legal effect;

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Section 101.04 Rules of Construction (continued)

D. Any word not specifically defined shall be construed according to its common usage unless the context or the manifest intent of Council clearly indicates otherwise;

E. Title, article, chapter, section and section subdivision names are part of this Code. However, reference to titles, articles, chapters, sections or section subdivisions are not intended to be exclusive, or to exclude other titles, articles chapters, sections or section subdivisions which may be applicable;

F. Whenever a provision appears requiring the director of a Department or Division of the County to do something, is it to be construed to authorize the head of the Department to designate, delegate and authorize subordinates to perform the required act unless the terms of the provision or section require otherwise.

CHAPTER 102 – PUBLIC DISCLOSURE

Section 102.01 Initial/Annual Disclosure of Interest

A. All elected and appointed County Officers, County Officials and Public Employees shall file with the County Manager a written statement in a form determined and published by the Ethics Commission and listing at a minimum:

1. The names and addresses of corporations, fictitious names, partnerships, business entities or enterprises in which the individual has a financial interest or investment resulting in holding more than five percent (5%) of the equity or more than five percent (5%) of the assets of the economic interest of indebtedness;

2. Every office or directorship held in any entity, either public or private, including any non-profit entity;

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Section 102.01 Initial/Annual Disclosure of Interest Continued

3. Street addresses of all real property owned in Luzerne County; upon application to the ACE Commission by an individual.

4. If the individual has a family member who is employed by Luzerne County or any of its affiliated boards, commissions, agencies, or authorities, the first and last given names and addresses of those family members and their relationship to the individual;

B. All elected and appointed County Officers, County Officials and Public Employees who have, will have, or later acquire an interest in any actual or proposed contract with Luzerne County, shall publicly disclose the nature and extent of such interest in writing to the ACE Commission as soon as this person has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body.

C. The initial disclosure statement must be filed with the County Manager within sixty (60) days of adoption and publication of a disclosure form by the ACE Commission. New employees who are required to file a disclosure statement shall do so within thirty (30) days of their hire date; All employees will have 30 days to amend their disclosure statement to report any changes. Employees are to amend their disclosure statement whenever there are changes in the reporting status.

D. The annual disclosure statement must be filed with the County Manager on or before March 1 each calendar year;

E. The requirements set forth in this Code do not replace those in the State Elections Law and do not constitute the Filing of Financial Interest Forms or Expense Reports as is otherwise required by state and/or federal law;

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Section 102.01 Initial/Annual Disclosure of Interest Continued

F. Any individual who fails to file the disclosure statement required in this Code by the established deadline shall be given fifteen (15) days to file such statement and thereafter shall be subject to disciplinary actions found within (Section 105.07), which may include the withholding of compensation until such time that the disclosure statement is filed with the County Manager;

CHAPTER 103 – CODE OF ACCOUNTABILITY, CONDUCT AND ETHICS

Section 103.01 Applicability of Code of Accountability, Conduct and Ethics

All Covered Persons shall be subject to the provisions on restricted activities/standards of conduct set forth in this Chapter.

Section 103.01A Section 2.17 of the Home Rule Charter

- A. Please refer to Section 2.17 of the Luzerne County Home Rule charter for the prohibitions laid upon County Council with regard to the operation of the executive branch of county government.
- B. In accordance with section 2.17 of the Luzerne Home Rule Charter the following is a list of penalties when a member of County Council is found to have violated the charter:
 - a. First offense- censure, public reading of commission findings at next appointed public meeting a \$100.00 fine. The findings against a council member and penalty will be published as a public notice. The council member will have their voting rights on county council suspended for 30 days.
 - b. Second Offense- censure, public reading of commission findings at next appointed public meeting as well as a \$200.00 fine. The findings against a council member and penalty will be published as a public notice. The council member will have their voting rights on county council suspended for 60 days.

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- c. Third offense- censure, public reading of commission findings at next appointed public meeting \$300.00 fine. The findings against a council member and penalty will be published as a public notice. The council member will have their voting rights on county council suspended for 120 days.

Section 103.02 General Ethical Obligations

A. All Covered Persons will be held accountable for adherence to the standards set forth in this Accountability, Conduct and Ethics Code. In matters of ethical dilemmas and conduct not covered under this Code, all Covered Persons are expected always to reflect on, and serve, what they believe to be in the public interest and not to serve personal interests and gain.

B. All Persons are subject to and are expected to be familiar with this Accountability, Conduct and Ethics Code, and the Pennsylvania Public Official and Employee Ethics Law, Act 93, Chapter 11, of 1998.

C. Individual Departments and Agencies may, as necessary, recommend conduct and procedures consistent with this code, which are specifically applicable to the work of the Department or Agency. . Such standards and procedures shall be forwarded to the County Manager for submission to County Council for approval, and with the understanding that the more stringent rules will apply to the individual department or agency. County Council shall address these submissions from the County Manager at their next scheduled public meeting.

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Section 103.03 Notification to Covered Persons

A. The County Manager shall be responsible for communicating to all Covered Persons the provisions of this Chapter. These provisions shall be covered as part of orientation for new and current employees and included in the employee handbook.

B. Part of each orientation should be devoted to a discussion of the Accountability, Conduct and Ethics Code, and each person shall receive a personal copy. As a condition of continued employment, each person shall sign a statement to the effect that he has received such copy, understands its contents, and agrees to abide by established policies. At the start of new calendar year as a condition of continued employment, each person shall sign a new statement to the effect that he has maintains a copy or received a new copy, understands its contents, and agrees to abide by established policies .

Section 103.04 Standards of Conduct

All Covered Persons shall set and follow an example of proper conduct that shall include the following:

A. Honor and Integrity

1. Dedicate themselves to the highest ideals of honor and integrity in all public relationships in order to merit the respect and confidence of Covered Persons, and the public.

Section 103.04 Standards of Conduct continued

C. Confidentiality and Disclosure

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1. Other than in the performance of his or her official duties, no Covered Person shall disclose, for his or her benefit, or the benefit of others, confidential information acquired by reason of his or her public position. Confidential information shall include but not be limited to information concerning and related to personnel matters, collective bargaining and arbitration, the purchase or lease of real estate, litigation, and potential litigation, investigations of violations of the law and quasi-judicial deliberations, and the non-property tax records of individuals.

D. Disclosure of Financial Interests

1. The requirements for disclosure of financial interests shall be those set forth in Section 102.01 and any other applicable state or federal law

E. Gifts, Loans, Benefits, and Considerations; Accepting Improper Influence

1. No Covered Person shall solicit or accept, directly or indirectly, a gift, loan, reward, promise of future employment, benefit or consideration from:

- a. A person or business having or seeking a financial relationship with the County;
- b. A person or business whose operations or activities are regulated or inspected by the County;
- c. A principal and/or attorney in proceedings in which the County is an adverse party; or
- d. Any person or business where the performance or non- performance of any official duty may be influenced or affected.

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Section 103.04 Standards of Conduct continued

F. Private Business/Financial Interests; Exerting Improper Influence

1. No Covered Person shall engage in any business transaction or private employment, or have any financial or other private interest, direct or indirect, which is to the detriment of the proper discharge of his or her official duties.

2. No Covered Person shall use, or attempt to use, his or her position to obtain financial gain, a loan, a contract, license, privilege, or other personal advantage, either direct or indirect.

3. No Coroner, while engaged in county business, shall solicit, discuss, or accept business for a funeral home that they are associated with, direct, or work for nor shall they recommend funeral home services to anyone while engaged in county business.

4. No Covered Person shall attempt to influence the course of proposed County Council legislation in which he/she, or a family member or business associate has a present or potential conflict of interest or private interest, direct or indirect.

4.A County solicitor, while engaged in county business, shall neither perform, discuss, or solicit any non-county-related business in which the solicitor has a financial interest, nor shall the solicitor, as well as any firm or practice with which the solicitor is affiliated, represent companies seeking or currently engaged in contracts, or other business agreements, with the county.

G. Nepotism/Patronage

1. All county employees and elected and public officials shall comply with Section 9.05 of the Charter relating to nepotism as well as all nepotism provisions contained within the entirety of the Administrative Code.

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Section 103.04 Standards of Conduct continued

H. Fees for Service Restriction

1. No Covered Person shall, for a fee or other compensation, use the influence of his or her position to provide a special service or favor to an individual.

I. Offering Special Benefits

1. No Covered Person shall grant, offer, or provide any privilege or service beyond that which is available to all other similarly situated persons, businesses or entities.

J. Honoraria

1. No Covered Person shall accept an honorarium for any activity related to his or her official capacity. Covered Persons may accept normal travel, meals and awards from civic or business groups.

K. Contracts

1. No Covered Person, or a family member of a Covered Person, or a business or organization with which such individual is associated, may have an interest in a public contract if the Covered Person is authorized to exercise discretion over the contract.

2. No covered person or immediate family member of a covered person shall be permitted to obtain a County contract with the County or its Agencies, Authorities, Boards, or Commissions during the period the Covered Person shall serve in County government and for one (1) year after leaving county service.

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Section 103.04 Standards of Conduct continued

L. Former Association

1. No former Covered Person shall represent a person, corporation or business with promised or actual compensation, on any governmental matter before the County government or any of its Agencies with which he has been associated for one year after he/she or she leaves that body.

M. Voting Conflict

1. Every Covered Person shall publicly disclose any direct or indirect financial or other private interest in any proposed legislation on which he would be required to vote. Covered Persons, who, in the discharge of their official duties, would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of the interest as a public record.

N. Misuse of County Resources

1. No Covered Person shall use, request, or permit the use of County resources, including, but not limited to, motor vehicles, equipment, and materials, except for County purposes.

2. No Covered Person shall use County mail to transmit mail that is personal or political in nature.

a. Official mail is mail which relates to the official duties of all applicable employees of the Government of Luzerne County and which is authorized to be transmitted in the mail through the Department of Administrative Services, or through an outside vendor under contract with the County or County employee

O. Political Activity

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1. Employees shall have the right to hold membership in a political party, to vote, to express publicly or privately opinions on political subjects and candidates, to maintain political neutrality, or to otherwise participate in political meetings and activities. Employees must engage in all such activities as private citizens, away from County workplaces, out of uniform and during non-working hours, except union officers in the normal conduct of union activities.

2. No Covered Person shall use the authority or influence of his or her office for the purpose of interfering with the result of an election.

3. No Covered Person shall solicit, directly or indirectly, any employee reporting to such Covered Person to engage in political activity or to suggest that such covered employee engage in such political activity. No Covered Person shall solicit, directly or indirectly, campaign contributions from a person reporting to such Covered Person.

P. Discrimination

1. No Covered Person shall, in any way, engage in discrimination on the basis of race, religion, creed, national origin, age, disability, sexual preference or gender. Nor shall any official or employee engage in any actions which are oppressive or which constitute harassment.

Q. Whistleblowing

1. Every Covered Person is required to disclose any information which he believes evidences a violation of any law, rule or regulation.

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Section 103.04 Standards of Conduct continued

2. Every Covered Person is encouraged to disclose any information which he believes evidences a clear misuse or waste of County funds, or an abuse of official authority, or which can result in a substantial and specific danger to the public's health or safety.
3. No Covered Person shall be penalized for, nor take any action to punish another, for whistleblowing. No County Officer or Appointee may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste. No County Officer or Appointee may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.
4. Every Covered Person is required to expose corruption wherever discovered.

Chapter 104 - Operations of Commission

Section 104.01 Establishment of Accountability, Conduct and Ethics Commission

- A. There is hereby established a five (5) member Accountability, Conduct and Ethics Commission, hereinafter the ACE Commission. The ACE Commission generally shall be empowered to receive, investigate and make findings and recommendations concerning complaints alleging the violation of this Accountability, Conduct and Ethics Code.

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Section 104.02 Member Qualifications - Qualifications for the ACE Commission shall comply with Section 9.04 of the Charter

Section 104.03 Removal

- A. ACE Commission members may be removed only for cause by County Council. Any ACE Commission member so removed may request, and be granted, a hearing before the County Council at which time such member may show cause why he should not be removed.

Section 104.04 Organization of the ACE Commission

- A. Within thirty (30) days of the appointment of the ACE Commission, the County Manager, or his/her designee shall be responsible for convening the appointed members of the ACE Commission. At this meeting, the ACE Commission shall elect one of its members as Chairperson. The County Manager, or his/her designee, shall preside as Interim Chairperson until an ACE Commission Chairperson is elected.

Section 104.05 Quorum

- A. Any three members of the Accountability, Conduct, and Ethics Commission shall constitute a quorum and shall have the power to perform the functions of the Commission.

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Section 104.06 Compensation

- A. Members of the ACE Commission shall receive no compensation for the performance of their duties. Members of the ACE Commission shall be reimbursed for travel and other necessary expenses incurred in the course of the performance of their duties.

Section 104.07 Records

- A. The Chairperson of the ACE Commission shall ensure that appropriate measures are taken to keep records of its official actions. Such records shall be kept and preserved in accordance with applicable law

Section 104.08 Rules and Procedures

- A. The ACE Commission shall adopt procedures and rules of conduct for its activities within sixty (60) days of its first organizational meeting.

Section 104.09 Administrative Support

- A. The County Manager shall furnish to the Commission such clerical assistance and supplies as may be deemed reasonable.

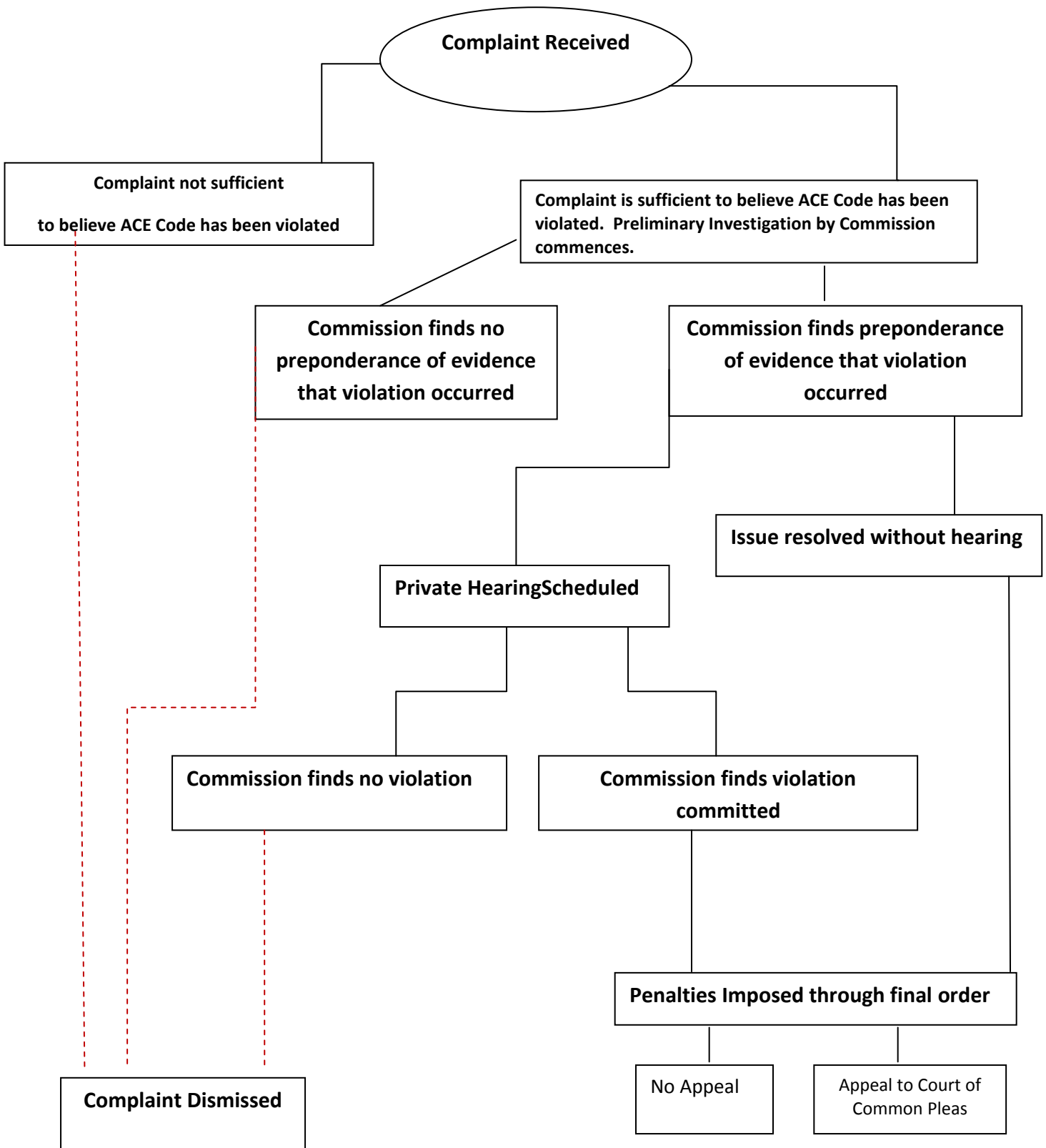
Chapter 105 – Complaint Process

Section 105.00(a) Flow Chart of Complaint Process (diagram below)

Section 105.00(b) Ethics Commission Complaint Form (below)

COUNTY OF LUZERNE
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Complaint Process: Accountability, Conduct and Ethics



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**LUZERNE COUNTY ETHICS COMMISSION
COMPLAINT FORM**

Complete the following form and return the original to: _____(INSERT HR ADDRESS).
Incomplete complaint forms will not be accepted.

NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

DEPARTMENT: *(County employees only)* _____

1. Person against whom complaint is filed: _____

2. IF KNOWN, CHECK THE SPACE(S) THAT APPLY

_____ Allegation is against person in County Government:

_____ Allegation is about County: Whistleblower Retaliation

3. Please indicate the possible Code of Ethics rule violation by stating the relevant paragraphs in the code. (The code is available online at _____ (INSERT WEB ADDRESS) or may be obtained from Human Resources at _____ (INSERT NUMBER):

4. What are the details of your Complaint? (In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. Please be specific with respect to names, dates and locations.)

5. OATH:

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

SIGNATURE: _____

DATE: _____

NOTE: Do not contact Ethics Commissioner Members directly as any such communication may compromise the processing of the complaint or result in the recusal of a Commission Member.

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Section 105.01 Complaint

- A. Any individual who believes that an action or omission of a covered person is in violation of this Ethics Code shall have the right to lodge a formal complaint with the ACE Commission.

- B. A Complaint alleging a violation of this Article shall be in writing and filed with the Office of the County Manager or his/her designee and shall contain the following before it will be considered by the ACE Commission:
 - 1. The name of the covered person (the respondent) and the position or office held by the respondent or any identifying information as in a vehicle number, day and time, location;
 - 2. The name, address and phone number of the person filing the complaint (complainant);
 - 3. A statement of alleged facts and circumstances that the complainant believes in good faith constitutes a violation of this Ethics Code;
 - 4. A sworn verification signed by the complainant.

- C. Within five (5) days of the receipt of the Complaint, the County Manager or his/her designee shall:
 - 1. Date stamp the Complaint
 - 2. Acknowledge, in writing, the receipt of the Complaint to the complainant.
 - 3. Keep the substance of the Complaint confidential, and

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Section 105.01 Complaint (continued)

4. Submit the Complaint to the ACE Commission.
 5. Notify the Respondent in writing.
- D. If a Complaint does not satisfy the requirements under Section 105.01(A) and (B), the Complaint will be dismissed as legally insufficient by the ACE Commission.
- E. When any individual, including any Respondent or member of the ACE Commission, believes that a Complainant is using the Ethics Commission Complaint process for any purpose other than the purpose promulgated in this code , that individual shall have the right to lodge a formal complaint with the ACE Commission in accordance with the complaint process herein.
- F. When a complaint filed with the ACE Commission lists any ACE Commission member as a respondent, the named ACE Commission member shall automatically be disqualified from participating in any inquiries, investigation, hearing, and final actions in his or her capacity as a member of the ACE Commission.
1. The named ACE Commission members shall be afforded all enumerated rights afforded to Respondents as outlined in this code.
- G. If any ACE Commission member files a complaint against any covered person, said ACE Commission member shall automatically be disqualified from participating in any inquiries, investigation, hearing, and final actions in his or her capacity as a member of the ACE Commission.
1. The ACE Commission member filing the complaint shall have the ability to act as witness in any subsequent ACE Commission investigation

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Section 105.01 Complaint (continued)

2. When an ACE Commission members believes that they cannot objectively participate in any inquiries, investigation, hearing, or final actions relating to a complaint, the ACE Commission member shall recuse themselves from participating in anything related to that complaint.
3. Neither any ACE Commission member nor other person participating in any ACE Commission process shall ever unduly influence any inquiries, investigation, hearing, or final actions relating to a complaint.
4. All ACE Commission members and other persons participating in any ACE Commission process are required to maintain strict confidentiality with regards to the names and any other identifying information associated with any filed complaint and subsequent complaint investigation.

Section 105.02 Preliminary Inquiries

- A. If a complaint is deemed legally sufficient, the ACE Commission shall commence a preliminary inquiry regarding an alleged violation of Chapter 101 within thirty (30) days of the receipt of a Complaint.
- B. A preliminary inquiry shall be terminated or opened as a full investigation within forty-five (45) days of the inquiry's initiation. A preliminary inquiry is considered initiated upon a finding by the ACE Commission that a Complaint is legally sufficient.
- C. The Commission shall keep information, records and proceedings relating to a preliminary inquiry confidential.

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Section 105.02 Preliminary Inquiries (continued)

- D. If, after preliminary inquiry, there is reason to believe that the Code of Accountability, Conduct and Ethics has been violated, the Commission shall initiate a full investigation. An investigation will be considered commenced when the respondent is notified.
- E. The Commission shall close the preliminary inquiry if any of the following applies:
1. The occurrence giving rise to the complaint occurred prior to the adoption of the Accountability, Conduct and Ethics Code;
 2. There is no reason to believe that the Code of Accountability, Conduct and Ethics has been violated; or
 3. The respondent is not a person subject to the Code of Accountability, Conduct and Ethics.
- F. If the preliminary inquiry is closed, the Commission shall notify the complainant and the respondent within five (5) days.

Section 105.03 Conduct of Investigation

- A. The Commission shall have the authority to conduct interviews, take statements, receive and inspect documents and records and otherwise obtain evidence and gather information by lawful means, including subpoena power.
- B. Within sixty (60) days of commencing the investigation, the Commission will do one of the following:
1. Terminate the investigation and notify the complainant and respondent;
 2. Extend, upon a showing of need, the investigation for a period not to exceed sixty (60) days;

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Section 105.03 Conduct of Investigation (continued)

3. Issue a findings report that sets forth the pertinent facts and affords the respondent an opportunity to reply to the findings and to request an evidentiary hearing;
 - i. The ACE Commission will only issue a findings report when a preponderance of evidence exists demonstrating that it is more probable than not that a violation of the Ethics Code occurred.
- C. The respondent shall file a response to the findings report of the Commission within thirty (30) days, unless an application for an extension is made to the Commission and granted for good cause shown. The respondent shall admit to or deny the allegations.
- D. If an investigation indicates that no violation has been committed, the Commission will immediately terminate the investigation and send written notice of the determination to the complainant and the person who was the subject of the investigation.
- E. The ACE Commission shall develop such other procedures and rules of conduct for its activities as it deems necessary.
- F. The ACE Commission will defer investigation and consideration of a Complaint if the United States Attorney General's Office, State Attorney General's Office, District Attorney's office, or any other chief of any other local law enforcement agency makes a written request to the Commission requesting deferment of a Complaint investigation.
 1. Upon receipt of such written notice, the Commission will issue an Order deferring the Ethics Commission investigation and serve notice to the Complainant and Respondent.
 2. Deferment of a complaint tolls any period of time prescribed pursuant to the applicable ordinance or code relating to inquiries, investigations, hearings, and final actions.

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- G. All press inquiries regarding a pending complaint investigation shall be referred to the Chairperson of the Ethics Commission. Prior to finding that a preponderance of evidence exists that a violation occurred, or the dismissal of the Complaint, the ACE Commission and its staff are prohibited from confirming or denying the existence of any complaint regarding any person or division. All such communication shall be from the chairperson of the ACE Commission.

Section 105.04 Hearings

- A. The Commission will conduct hearings upon the request of a respondent. A respondent shall request a hearing in his or her response to the findings report. Failure to request a hearing within the time period will be deemed a waiver.
- B. A respondent may be accompanied by an advocate, which may include a family member, friend, or legal counsel, at the hearing.
- C. A respondent may bring any necessary witnesses to testify on Respondent's behalf.
- D. A hearing will be held within forty-five (45) days after the respondent's answer to the findings report unless the time is extended upon application for good cause shown.
- E. A notice of hearing will be issued to the respondent, unless represented by counsel, in which case to counsel, within a reasonable period of time prior thereto. The notice will advise of the date, time and location of the hearing, and of the hearing rights, privileges, process and procedures in this section.
- F. The Commission may establish such rules of conduct for hearings, as it deems advisable in accordance with the normal procedures of due process.

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- G. Where a Respondent or his/her representative provides written verification to the Ethics Commission requesting continuation of the proceedings, the Ethics Commission will grant such a continuance only upon a showing of good cause by the Respondent.

Section 105.05 Discovery

- A. Upon request, the respondent will be given access to evidence the Commission intends to use at the hearing, as well as any exculpatory evidence developed during the investigation.
- B. Access to evidence does not include information that is otherwise privileged.

Section 105.06 Confidentiality

- A. All complaints, investigative inquiries, hearings, and documents and disclosures therein concerning any filed complaints shall be deemed personnel matters and therefore kept confidential in accordance with the Pennsylvania Sunshine Act and Right to Know Law.
- B. While the final findings, orders, recommendations, and conclusions of any Ethics Commission investigation may be made available for public, neither the names nor identifying information of any person party to an investigation shall be made public.

Section 105.07 Final Action of Commission

- A. The Commission shall, upon finding that an ethics code violation occurred, recommend penalties, which shall be in conformity with penalties prescribed in the Charter, Ethics Code, and also the Table of Penalties relating to violations of the Personnel Code.
- B. In cases where the violation of this code is also a violation of federal or state law, the matter shall be turned over to the proper authority for criminal prosecution.

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Section 105.08 Disposition

- A. Upon receiving any findings, conclusions and recommendations from the ACE Commission for the imposition of sanctions or penalties under this provision, the County Council and County Manager or his/her designee or appropriate County Official shall take appropriate action. The County Manager or his/her designee or appropriate County Official shall notify the County Council and ACE Commission of the disposition of all recommendations within thirty (30) days of receipt.

Section 105.09 Statute of Limitations

- A. An action filed with the ACE commission must be filed within four years of the date when the violation of the Ethics code occurred.
- B. The Statute of Limitations on any Complaint begins to run on the date when the Complainant knew, or should have known, that the Respondent committed a violation of the ethic code.

Section 105.10 Appeal

- A. Upon disposition of the Commission's recommendation, any aggrieved party within thirty (30) days may file an appeal to the Court of Common Pleas in accordance with applicable law.
- B. The Court of Common Pleas shall apply an "abuse of discretion" standard in reviewing any appeals. Under this standard, the appeal judge will give deference to the Commission's view of evidence, and will reverse the Ethics Commission decision only if the appeal judge determines that the Commission exceeded its express discretionary powers or recommended penalties beyond its express scope.

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Section 105.11 Summary and Annual Report to Council and County Manager

- A. The Commission shall report its conclusions and recommendations on all Complaints to the County Council and the County Manager.
- B. The Chairperson of the Commission shall be required to provide Council with an annual report, which shall include all necessary information and statistics regarding the number and types of complaints received and dispositions rendered.
 - 1. This report shall not contain the names of any Complainants or Respondents or any other personal information that would reasonably lead to the identification of either a Complainant or Respondent.
 - 2. The County Manager shall furnish to the Commission such clerical assistance and supplies as may be deemed reasonable for the completion and submission of the annual report to the County Council.

Section 105.12 Frivolous or Groundless Complaints

- A. In any case where the ACE Commission determines that the complaining party filed a frivolous or groundless complaint, the Commission shall order the complaining party to pay any costs and attorney's fees incurred by the Commission and/or the Respondent.
- B. A complaint is deemed to be frivolous or groundless when there is a complete absence of any justiciable issue of either law or fact raised by the complainant, or is found to have been filed with malicious intent and with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains materially false allegations.

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- C. The determination of the ACE Commission regarding whether a complaint is frivolous or groundless is deemed conclusive.

CHAPTER 106 – MISCELLANEOUS

Section 106.01 Severability

- A. The provisions of this Accountability, Conduct and Ethics Code are severable, and if any provision is held illegal, such illegality shall not affect the remaining provisions. It is the legislative intent of the Council that the Ethics Code would have been adopted if such illegal provision had not been included.

Section 106.02 Effective Date

- A. Unless otherwise provided, this Accountability, Conduct and Ethics Code shall become effective immediately upon its approval in accordance with the provisions of the Home Rule Charter and the Administrative Code.

Section 106.03 Application

- A. Nothing herein shall be construed or interpreted to in any way make the provisions of the Accountability, Conduct and Ethics Code applicable on a retroactive basis. All provisions of this Code shall be applied on a prospective basis.