

Luzerne County, Pennsylvania

Accountability, Conduct, and Ethics Code

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CHAPTER 101 – ESTABLISHMENT OF ACCOUNTABILITY, CONDUCT, AND ETHICS CODE

Section 101.01 Preamble

The proper function of the governance of Luzerne County requires (1) that public officials and employees be competent, independent, honest, impartial and responsible to the public; (2) that governmental decisions and policies be made in the appropriate channels of County governmental structures; (3) that public office not be used for public gain; and (4) that the public have confidence in the integrity of the County government, its employees, and its officials. To accomplish these ends the Accountability, Conduct and Ethics Code (hereinafter the Ethics Code) and Accountability, Conduct, and Ethics Commission of Luzerne County (hereinafter ACE Commission) were established. The work of the Code and the Commission serves as a reminder that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. Because the public has a right to be assured that the financial interests of holders of or nominees or candidates for public office do not conflict with the public trust and because public confidence in government can be sustained best by assuring the people of the impartiality and honesty of public officials, it shall be the task of the ACE commission to promote complete financial disclosure as specified in the Home Rule Charter and the Ethics Code. Furthermore, inasmuch as it is recognized that clear guidelines are needed in order to guide public officials and employees in their actions, this Ethics Code attempts to define as clearly as possible those areas which may represent conflict with the public trust.

Section 101.02 Purpose of the Ethics Code

The purpose of the 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 consistent with all applicable laws of the Commonwealth of Pennsylvania.

Section 101.03 Operation of Accountability, Conduct and Ethics Commission

The ACE Commission, as established in Section IX of the Home Rule Charter, is an independent commission that shall be empowered to receive complaints from any individual and investigate alleged violations of the Ethics Code by any employee of the County, by any member or employee of any County authority, board or commission, by any elective official or employee of his or her office, or by any employee of the Judiciary or Office of Court Administration. The ACE Commission shall set forth, in compliance with the Ethics Code, standards for determining which complaints warrant investigation; procedures by which investigations shall be conducted; the methods to preserve confidentiality, as appropriate; standards upon which final determinations shall be made; procedures for notification and dissemination of determinations; standards for imposition of sanctions, penalties, and remedies; and any other policies, practices, and procedures appropriate for the efficient and effective operation of the ACE Commission.

CHAPTER 102 – Definitions and Construction

Whenever used in this Code, local laws, ordinances, legalizing acts or resolutions, unless otherwise expressly stated or required by subject matter or context, words will have the following definitions:

- A. **County** shall mean the County of Luzerne;
- B. **Charter** shall mean the Home Rule Charter of the County and all amendments thereto;
- C. **Administrative Code and Code** shall mean this Administrative Code adopted by and for the County of Luzerne and all amendments hereto;
- D. **County Council** shall mean the elective legislative body of Luzerne County as provided for in the Charter;
- E. **County Manager** shall mean the County Manager appointed by the County Council pursuant to the Luzerne County Charter;
- F. **County funds** shall mean all monies collected by any office or Division of the County Government;
- G. **Covered Persons** shall mean all employees of the County, all members and employees of County authorities, boards, and commissions, all elective County officials and all employees of their offices, and all employees of the Judiciary and Office of Court Administration (HR Charter, Section 9.03).
- H. **Administrative Service** shall mean Divisions under and directly reportable to the County Manager;
- I. **Adoption or enactment of an ordinance or resolution** occurs when an ordinance or resolution is lawfully passed by County Council, or when a majority of those voting on an ordinance proposed by an initiative petition cast votes in the affirmative and the results are certified by the Board of Elections and Registration. However, if this Charter requires County Council to submit an ordinance or resolution to the County Manager for his/her review, then adoption or enactment does not occur until the expiration of the time allowed for the County Manager to request in writing that County Council reconsider its action as provided for in Section 2.12 B. of this Charter, or, if reconsideration is requested, Council confirms its original action as provided for in Section 2.12 D. of this Charter;
- J. **Applicable law and applicable laws** shall refer to those laws of the Federal Government and/or the Commonwealth of Pennsylvania that the County is required to observe and adhere to in the exercise of its home rule powers;
- K. **Clerk of County Council and Office of Clerk of County Council** shall mean the position/office responsible for recording and filing the proceedings and papers of County Council, attesting to all official actions of County Council, and possessing related powers and duties;

- L. **County employee and County employment** shall mean any individual who has been hired by or is employed by Luzerne County in any capacity and to whom a salary, compensation, stipend, or emolument is paid;
- M. **Current members of County Council** shall mean those holding seats on County Council that are not vacant;
- N. **Days** shall mean calendar days unless business days are specifically referenced. A calendar day is any day including a Saturday, Sunday, and legal County holiday. If action is required on a calendar day that is not a County business day, action shall be required by the next business day, which shall mean any day not a Saturday, Sunday, or a legal County holiday;
- O. **Elected or elective County office and elected or elective County official** shall mean the members of Luzerne County Council, the Controller, and the District Attorney;
- P. **Elected or elective public office and elected or elective public official** shall mean any federal, state, county, municipal, or school district position that is elective;
- Q. **Home Rule Charter and Optional Plans Law** shall mean the Act of April 13, 1972, as amended, or successor law;
- R. **Immediate Family** shall mean parent, spouse, child, brother, or sister;
- S. **Luzerne County Court of Common Pleas, Court of Common Pleas of Luzerne County, Court of Common Pleas, and Court** shall mean the Court of Common Pleas of the 11th Judicial District of the Commonwealth of Pennsylvania, presently coterminous with Luzerne County;
- T. **Members of Council whose presence at the meeting is recorded and who are eligible to vote** shall mean those in attendance at a meeting of County Council or lawfully participating in a meeting of County Council via telephonic, electronic, and/or other permitted devices and who are not prevented from voting by the State Ethics Act, by the County Accountability, Conduct, and Ethics Code, or by any other prohibition in this Charter or applicable law;
- U. **Public hearing** shall mean a special meeting at which time there will be only one order of business, and at which the public shall be permitted to speak on the subject specified. For required public hearings, public notice must be given as provided for in this Charter, the Administrative Code, or applicable law;
- V. **Public office, public official, public employee, and public employment** shall mean any paid or unpaid Federal, State, County, Municipal, or School District position that is not elective;
- W. **Registered voter** shall mean a person who is lawfully registered and eligible to vote in Luzerne County having met the residency, registration, and other requirements as set forth in applicable law;
- X. **Technical codes** are standard or nationally recognized codes or technical rules, regulations, or specifications, such as building, electrical, health, and safety codes, etc.;

Y. **Family member** shall mean: Parent; step-parent; spouse or domestic partner; spouse's or domestic partner's parent or step-parent; child; step-child; brother; step-brother; brother-in-law; sister; step-sister; sister-in-law; cousin; aunt; uncle; grandchild; and grandparent;

Z. **Domestic Partner** shall mean a person in a stable relationship between two (2) individuals, where both:

1. Are at least 18 years old; and
2. Are not related to the other domestic partner by marriage or blood, within the degree of consanguinity defined by PA law;

and where evidence of a stable and committed relationship exists through one or more of the following:

1. Financial interdependence for a period of no less than one (1) year; and/or
2. Sharing of at least one residence; and/or
3. Other credible evidence of such relationship.

All words and phrases in this Code are used according to their accepted and ordinary meaning except where another meaning is specifically indicated. Words used in the singular number shall extend to and include the plural number, and words used in the plural number shall extend to include the singular number.

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 Ethics Code.

Section 103.02 General Ethical Obligations

- A. All Covered Persons will be held accountable for adherence to the standards set forth in the 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 Covered Persons are subject to and are expected to be familiar with the Ethics Code and with 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, not inconsistent with the Ethics Code, that 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 its next scheduled public meeting.

Section 103.03 Special Application to Luzerne County Council

- 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. Any suggestion or opinion proffered by County Council at a meeting shall not constitute an order or directive per Section 2.17 of the Charter.
- B. The following is a list of penalties to be applied when a member of County Council is found to have violated the charter.
 - 1. First Offense - censure, a \$100.00 fine, and, as directed by Council, the Council member shall be required to abstain from voting on any issue related to the violation.
 - 2. Second Offense - censure, a \$300.00 fine, and, as directed by Council, the Council member shall be required to abstain from voting on any issue related to the violation.
 - 3. Third Offense - censure, a \$500.00 fine and, as directed by Council, the Council member shall be required to abstain from voting on any issue related to the violation.

Section 103.04 Notification to Covered Persons

- A. The County Manager shall be responsible for communicating to all Covered Persons the provisions of the Ethics Code. These provisions shall be included in the employee handbook and covered as part of orientation for new and current employees.
- B. Part of each orientation shall be devoted to a discussion of the Ethics Code, and each person shall receive a personal copy. When the Ethics Code shall be updated, the County Manager shall be responsible for providing an updated copy of the Ethics Code to all Covered Persons.

Section 103.05 Standards of Conduct

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

A. Honor and Integrity

Dedicating 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.

B. Service in the Public Interest

- 1. Serving the best interests of the public at all times with the recognition that this is the chief function of government.
- 2. Seeking to employ efficient and economical ways of accomplishing necessary tasks and functions.

C. Confidentiality and Disclosure

Respecting confidentiality and refraining from disclosing confidential information, as follows: No Covered Person, other than in the performance of his or her official duties, 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

The requirements for disclosure of financial interests shall be those set forth in applicable state or federal law.

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

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

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

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 he or she is associated with, directs, or works for; no Coroner shall 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 or she, or a family member or business associate, has a present or potential conflict of interest or private interest, direct or indirect.
5. No Covered Person, while engaged in county business, shall perform, discuss, or solicit any non-county-related business in which the Covered Person has a financial interest
6. No County Solicitor shall represent any individual, group or business in any lawsuit against the County.

G. Patronage/Nepotism

1. No Covered Person shall unduly exert, negatively or positively, his or her influence to gain, or attempt to gain, preferential treatment on behalf of an applicant for employment or advancement with the County.
2. No family member of a County Official or County Officer shall be permitted to obtain full time employment with the County or Agency except through the election to a public office.
3. No Covered Person shall supervise a family member.

H. Offering Special Benefits

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.
2. 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.

I. Honoraria

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.

J. Contracts

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.

K. Former Association

No former Covered Person, regardless of profession, 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 or she has been associated for one year after he or she leaves that body.

L. Voting Conflict

Every Covered Person shall publicly disclose any direct or indirect financial or other private interest in any proposed legislation on which he or she 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.

M. 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 resources to transmit information that is personal or political in nature. Official information is information which relates to the official duties of all applicable County employees.

N. Political Activity

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.

O. Discrimination

No Covered Person shall, in any way, engage in discrimination on the basis of race, religion, creed, national origin, age, disability, sexual orientation, or gender, or shall any official or employee engage in any actions which are oppressive or which constitute harassment.

P. Whistle-blowing

1. Every Covered Person is encouraged to disclose any information which he or she believes evidences a violation of any law, rule or regulation.
2. Every Covered Person is encouraged to disclose any information which he or she 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 whistle-blowing. 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 encouraged to expose corruption wherever discovered.

Section 103.06 Ethics Training for Elected Officials and Employees

- A. Each elected official, members of each elected official's personal staff, each employee holding a senior administrative service position with the County, and each board or

commission appointee, upon due notice, shall attend an ethics education seminar offered on a regular basis by the ACE Commission within 120 days of the effective date of this amendatory ordinance or within 120 days of becoming an elected official, becoming a member of an elected official's personal staff, becoming a board or commission appointee or holding a senior administrative service position with the County (or as soon thereafter as an ethics education seminar is offered by the Board of Ethics) and every four years thereafter. The seminar shall educate persons as to their duties and responsibilities under this article.

- B. The ACE Commission shall define "senior administrative service position" by rule.
- C. Each County employee shall participate in ethics training at least once during his or her employment by the County. New employees shall participate in ethics training as part of their orientation to County employment.

Chapter 104 Operations of Accountability, Conduct, and Ethics Commission

Section 104.01 Establishment of ACE Commission

There is hereby established a five (5) member 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.

Section 104.02 Member Qualifications

- A. The ACE Commission shall consist of the County Manager or his or her designee, the District Attorney or his or her designee, the Controller or his or her designee, and two registered voters of Luzerne County appointed by resolution of County Council adopted by the affirmative vote of at least a majority of its current members.
1. The two registered voters appointed by County Council shall not be members of the same political party. One appointee shall be a member of the political party receiving the highest number of votes cast in Luzerne County for the office of Governor of Pennsylvania in the most recent general election for that office and one appointee shall be a member of the political party receiving the second highest number of votes cast for that office in that election. At the time of their respective appointments, each of the members of the ACE Commission appointed by County Council shall have been a member of the same political party continuously for at least five years and shall remain a member of that party during his or her term of office.
 2. If the political party receiving the highest or second highest number of votes cast in Luzerne County for the office of Governor of Pennsylvania in the most recent general election for that office has not been recognized within the county for five years, the appointee shall be a member of that political party since its recognition by the Commonwealth of Pennsylvania and shall remain a member of that party during his or her term of office.
 3. In the event that the County Manager, District Attorney, and/or Controller shall utilize the appointment of a designee as a member of the ACE Commission, the designee shall be the official member of the Commission until replaced. The clear intent of the ACE Commission is to provide a consistent body to review ethics complaints. Designees shall not be appointed on a case-by-case basis.
- B. For those initially appointed to the Accountability, Conduct, and Ethics Commission by County Council, one member shall serve for a term of two years, and one member shall serve for a term of four years. The appointees shall draw lots to determine who shall serve the two year term and who shall serve the four year term. Thereafter, except as may otherwise be provided for in the Home Rule Charter or applicable law, all terms shall be four years.
- C. Within the first thirty (30) days of the year following its initial election, County Council shall appoint the members of the ACE Commission it is empowered to appoint. If County Council fails to do so, any resident of Luzerne County may petition the Court of Common Pleas to make the appointment(s). In such a case, the Court by a majority vote of its members shall make the appointment(s) within thirty (30) days after receiving such petition.

- D. At the expiration of a term of office of any member subject to appointment by County Council, or when either of these positions is declared vacant by County Council pursuant to Section 11.06 of the Home Rule Charter, County Council at a regular or special meeting held within sixty (60) days after the expiration of the term or the declaration of the vacancy shall make the appointment or fill the vacancy by resolution adopted by an affirmative vote of at least a majority of its current members. The person appointed shall be a member of the same political party as the person he or she is to succeed, unless that party is no longer one of the parties that received the highest or second highest number of votes cast in Luzerne County for the office of Governor of Pennsylvania in the most recent general election for that office. In such a case, the person appointed shall be a member of the party that replaced it as one of the two parties receiving the highest number of votes cast in Luzerne County for the office of Governor in the most recent general election for that office. In either case, the person appointed shall have been a member of that party continuously since its recognition or for at least five years prior to the date of appointment.
- E. If County Council fails to make any appointment or fill any vacancy within the time allotted, any resident of Luzerne County may petition the Court of Common Pleas to fill the position. In such a case, the Court by majority vote of its members shall fill the position within thirty (30) days after receiving such petition. At the time of his or her appointment, throughout his or her term of office, and for a period of at least four years prior to appointment, no member of the ACE Commission appointed by the County Council shall be or have been an elective County official, County employee, member or employee of any County authority, board or commission, be or have been employed or compensated by any individual or business serving as a contractor to the County or any County authority, board, or commission, serve or have served as a paid consultant for the County or any County authority, board, or commission, or serve or have served as an officer in a political party. Further, for a period of one year after leaving office, no member of the ACE Commission appointed by County Council shall serve as a County employee, be appointed to or serve as an employee of any County authority, board, or commission except as may specifically be provided for in the Luzerne County Home Rule Charter, be employed or compensated by any individual or business that served as a contractor to the County or any County authority, board, or commission during the time he or she served as a member of the ACE Commission, or serve as a paid consultant for the County or any County authority, board, or commission.

Section 104.03 Removal

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 or she should not be removed.

Section 104.04 Organization of the ACE Commission

Within thirty (30) days of the appointment of the ACE Commission, the County Manager, or his or 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 and one of its members as Vice Chairperson. The County Manager, or his or her designee, shall preside as Interim Chairperson until an ACE Commission Chairperson is elected.

Section 104.05 Voting

- A. Any three members of the Accountability, Conduct, and Ethics Commission, one of whom must be a citizen member, shall constitute a quorum and shall have the power to perform the functions of the ACE Commission.
- B. A member, for good cause, may recuse himself or herself from the process of any complaint. The member who recuses himself or herself shall notify the chair of the ACE Commission.
- C. A simple majority is required for an action to move forward. A simple majority is determined as a numerical majority of members present and voting.

Section 104.06 Compensation

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 Minutes and Records

The Chairperson of the ACE Commission shall ensure that appropriate measures are taken to keep minutes of the ACE Commission's proceedings and records of other official actions. Such records shall be kept and preserved in accordance with applicable law.

Section 104.08 Rules and Procedures

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

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

Section 104.10 Attorney for ACE Code Enforcement

The ACE Commission shall appoint a panel of three (3) attorneys to assist in the enforcement of the Ethics Code. These attorneys shall be independent contractor attorneys not otherwise employed by the County and shall be appointed following an RFP process establishing an hourly rate and a cap on total annual fees that may be paid.

The ACE Commission shall appoint, on a rotating basis, one (1) of the three (3) Attorneys to serve as the Enforcement Attorney in each case in which a complaint is lodged with the ACE Commission. The duties of the appointed attorney for the ethics code enforcement (hereinafter ACE Attorney) shall include the following:

- A. To promptly undertake and complete an investigation of all matters involving alleged violations of the Ethics Code called to his or her attention by written complaint;
- B. To make a determination on completion of his or her investigation whether there is reason to believe that the Ethics Code has been violated;
- C. To terminate the investigation if the ACE Attorney concludes that there is no reason to believe that the Ethics Code has been violated and to so notify the complainant, the person who had been the subject of the inquiry, and the ACE Commission;
- D. To file a formal complaint against the person who has been the subject of the investigation if he/she concludes that there is reason to believe that the Ethics Code has been violated, and to serve notice of that complaint by mail upon the alleged violator with notice that the

- alleged violator has thirty (30) days to file a response thereto;
- E. To reach an agreed-upon resolution, including any proposed sanctions for the alleged violations, with the alleged violator, said resolution to be set forth in a written agreement which must be submitted to an approved by formal action of the ACE Commission; and
 - F. To prosecute before the ACE Commission complaints not resolved by written agreement approved by the ACE Commission.

Chapter 105 – COMPLAINT PROCESS

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 Designee of the County Manager. Before being considered by the ACE Commission the complaint shall contain the following:
 - 1. The name of the Covered Person (the respondent) and the position or office held by the respondent;
 - 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; and
 - 4. A sworn verification signed by the complainant;
 - 5. The ACE Commission complaint form to be utilized in filing a complaint is attached hereto as Exhibit “A.”
- C. Upon receipt of any communication addressed to the ACE Commission, within five (5) days, the designee of the County Manager shall:
 - 1. Date stamp the unopened envelope;
 - 2. Submit the unopened envelope to the designated ACE Attorney.
- D. The designated ACE Attorney shall:
 - 1. Acknowledge, in writing, the receipt of the complaint to the complainant;
 - 2. Notify the respondent; and
 - 3. Keep the substance of the complaint confidential;
- E. If a complaint does not satisfy any requirements under Section 105.01B the complaint will be dismissed as legally insufficient by the ACE Attorney, and the ACE Attorney shall so notify the ACE Commission.
- F. When any individual, including any respondent or member of the ACE Commission, believes that a complainant is using the ACE Commission complaint process for any purpose other than the purpose promulgated at Section 101.01, that individual shall have the right to lodge a formal complaint with the ACE Commission in accordance with the complaint process herein.
- G. 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. The named ACE Commission member shall be afforded all enumerated rights afforded to respondents as outlined in this code.
- H. 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. The ACE Commission member filing the complaint shall have the ability to act as witness in any subsequent ACE Commission investigation.

Section 105.02 Preliminary Inquiries

- A. If a complaint is deemed legally sufficient, the ACE Attorney shall commence a preliminary inquiry regarding an alleged violation of Section 101.01 and 103.04 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 Attorney that a complaint is legally sufficient.
- C. The ACE Attorney shall keep information, records and proceedings relating to a preliminary inquiry confidential.
- D. If, after preliminary inquiry, there is reason to believe that the Ethics Code has been violated, the ACE Attorney shall initiate a full investigation. An investigation will be considered commenced when the respondent is notified.
- E. The ACE Attorney 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 Ethics Code;
 - 2. There is no reason to believe that the Ethics Code has been violated; or
 - 3. The respondent is not a person subject to the Ethics Code.
- F. If the preliminary inquiry is closed, the ACE Attorney shall notify the complainant and the respondent within five (5) days.

Section 105.03 Conduct of Investigation

- A. The ACE Attorney 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. The ACE Attorney shall have the right to seek the issuance of subpoenas from the ACE Commission which shall have the authority to issue subpoenas to enable the ACE Attorney to obtain documents and records and otherwise obtain and gather evidence.
- B. Within sixty (60) days of commencing the investigation, the ACE Commission will do one of the following:
 - 1. Terminate the investigation and notify the complainant and respondent if the ACE Attorney determines that there is not a reasonable basis to believe that the Ethics Code has been violated;
 - 2. Extend, if needed, the investigation for a period not to exceed sixty (60) days;
 - 3. Issue a formal complaint that sets forth the allegations which constitute a violation of the Ethics Code and notifies the respondent that he/she has thirty (30) days to respond in writing to the complaint.
- C. The respondent shall file a response to the formal complaint within thirty (30) days, unless an application for an extension is made to the ACE Commission and granted for good cause shown. The respondent shall admit to or deny the allegations.
- D. After the respondent files his or her response to the formal complaint, the ACE attorney and respondent may enter into a formal written agreement to resolve the matter, which agreement must be submitted to and approved by formal action of the ACE commission. If the ACE Commission rejects the proposed resolution agreement, the matter would proceed to hearing. Likewise the matter will proceed to hearing if no proposed agreement for resolution of the matter is submitted to the ACE Commission for its approval.
- E. If no resolution by agreement is reached, the matter will be scheduled for hearing before the ACE Commission as set forth hereinafter.

- F. The ACE Commission shall develop such other procedures and rules of conduct for its activities as it deems necessary.
- G. 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 ACE Commission requesting deferment of a complaint investigation.
 - 1. Upon receipt of such written notice, the ACE Commission will issue an order deferring the ACE Commission investigation and serve notice to the complainant and respondent.
 - 2. Deferment of a complaint similarly pauses any period of time prescribed or allowed for ACE Commission action pursuant to the applicable ordinance or code.
- G. All press inquiries regarding a pending complaint investigation should be referred to the Chairperson of the ACE 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.

Section 105.04 Hearings

- A. The ACE Commission will conduct hearings upon the request of a respondent. A respondent shall request a hearing in his or her response to the (formal complaint). 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 formal complaint 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 notice will be issued 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 ACE Commission may establish such rules of conduct for hearings as it deems advisable in accordance with the normal procedures of due process.
- G. Where a respondent or his or her representative provides written verification to the ACE Commission requesting continuation of the proceedings, the ACE Commission will grant such a continuance only upon a showing of good cause by the respondent.
- H. The ACE Commission will cause to be made a stenographic record of all hearings and such copies of the transcript thereof as it requires for its own purposes. A respondent or his or her attorney desiring copies of such transcript may purchase copies from the official reporter. Any witness may purchase from the official reporter a copy of the transcript, or any part thereof, relating to the testimony of such witness.
- I. The ACE Attorney shall initiate the presentation of evidence and shall have the burden of proving by a preponderance of the evidence that the respondent has violated the Ethics Code. The ACE Attorney and the respondent-attorney shall have the right of presentation of evidence, cross examination, objection, motion, and argument. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.
- J. When objections to the admission or exclusion of evidence or other procedural objections are made, the grounds relied upon shall be stated briefly. The ACE Commission with the advice of its Solicitor shall rule on such objections. The ACE Commission may limit appropriately the number of witnesses who may be heard upon any issue to eliminate unduly repetitious or cumulative

evidence. All testimony shall be given under oath.

Section 105.05 Discovery

- A. Upon request, the respondent will be given access to evidence the ACE Attorney 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. However, written decisions of the ACE Commission which set forth its final adjudication, findings, recommendations, conclusions, sanctions, and order may be made available to the public.

Section 105.07 Final Action of the ACE Commission

- A. The ACE Commission shall issue a written decision setting forth its findings, reasoning and conclusions. If the ACE Commission finds that a violation has occurred, it will set forth the penalties to be imposed for the violation as provided by this subsection.
- B. The ACE Commission, upon finding that an Ethics Code violation occurred, shall recommend and/or impose the penalties as provided by this subsection.
- C. 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.
- D. In cases where the violation is a violation of the rules of this Ethics Code, the following penalties, in accordance with existing personnel practices, collective bargaining agreements, and/or statutes, shall be available to the ACE Commission:
 - 1. *Admonition*: A letter to the respondent, the complainant, County Council, and the County Manager or appropriate elected County Official, indicating that the respondent has been found to have violated this code.
 - 2. *Public Censure*: Public censure of the respondent at a public meeting of the ACE Commission and notification to the respondent, the complainant, County Council, and County Manager, or appropriate elected County Official, indicating that a violation of this code took place, and expressing strong disapproval of the respondent's actions.
 - 3. *Suspension*: Recommendation to the respondent and the County (or his or her designee) or to the appropriate County official who is the supervisor of the respondent that the respondent be suspended without compensation in compliance with the existing Personnel Policy's Table of Offenses and Penalties.
 - 4. *Expulsion/Dismissal*: Recommendation to the respondent and the County Manager (or his or her designee) or to the appropriate County official who is the supervisor of the respondent that the respondent be terminated or his or her contract with the County be terminated.
 - 5. *Removal*: Recommend the removal of respondent under provisions of the Home Rule Charter or by law.
- E. *Fines and Restitution*: For each violation of the Ethics Code, respondent shall be subject to a fine up to five-hundred dollars (\$500.00) which shall be imposed directly by the ACE Commission. In addition, the ACE Commission shall order the respondent who realizes financial gain by way of a violation of the Ethics Code to pay into the County Treasury a sum of money equal to the financial gain resulting from the violation. The ACE Commission shall determine the amount of financial gain realized. Any fines imposed or restitution ordered will be made public at the ACE

Commission meeting.

Section 105.08 Disposition

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 or her designee or appropriate County Official shall take appropriate action. The County Manager or his or 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 of the alleged violation of the Ethics Code.
- 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 Ethics Code.

Section 105.10 Appeal

- A. Upon issuance of the ACE Commission's written decision, any aggrieved party may file within thirty (30) days 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 ACE Commission's factual findings and view of evidence and will reverse the ACE Commission decision only if the appeal judge determines that the Commission exceeded its express discretionary powers or recommended and/or imposed penalties beyond its express authority or rendered a decision contrary to law.

Section 105.11 Summary and Annual Report to Council and County Manager

- A. The ACE Commission shall report its conclusions and recommendations on all complaints to the County Council and the County Manager.
- B. The Chairperson of the ACE 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 ACE 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

In any case where the ACE Commission determines that the complaining party filed a complaint that is frivolous, groundless or containing allegations which the complaining party knew were false, or containing allegations which the complaining party set forth in reckless disregard of whether the allegations were false, the ACE Commission shall order the complaining party to pay any costs and attorney's fees incurred by the ACE Commission and/or the respondent.

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.

CHAPTER 106 – MISCELLANEOUS Section

106.01 Severability

The provisions of this 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 County Council that the Ethics Code would have been adopted if such illegal provision had not been included.

Section 106.02 Effective Date

Unless otherwise provided, this 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

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

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

Complete the following form (Incomplete complaint forms will not be accepted); return the original to:

ACE Commission
c/o County Manager's Office
ATT: ACE Commission
200 North River Street
Wilkes-Barre PA 18711

N.B.: Do not contact ACE Commission members directly as any such communication may compromise the processing of the complaint or result in the recusal of an ACE Commission member.

1. Complainant Information

Name of complainant: _____
Address: _____
Home Phone Number: _____ **Cell Phone Number:** _____
Department (County employees only) _____

2. Respondent (Covered Person against whom complaint is filed) Information

Name of respondent: _____
Position or Office held by respondent: _____
County Department (if applicable) of respondent: _____

3. Please indicate the alleged violation of the Ethics Code by stating the relevant paragraph(s) in the Code. (The code is available online at the home page of the ACE Commission on the Luzerne County website or may be obtained from the County Manager's Office at 200 N. River Street in Wilkes-Barre, PA 18711.)

4. 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.

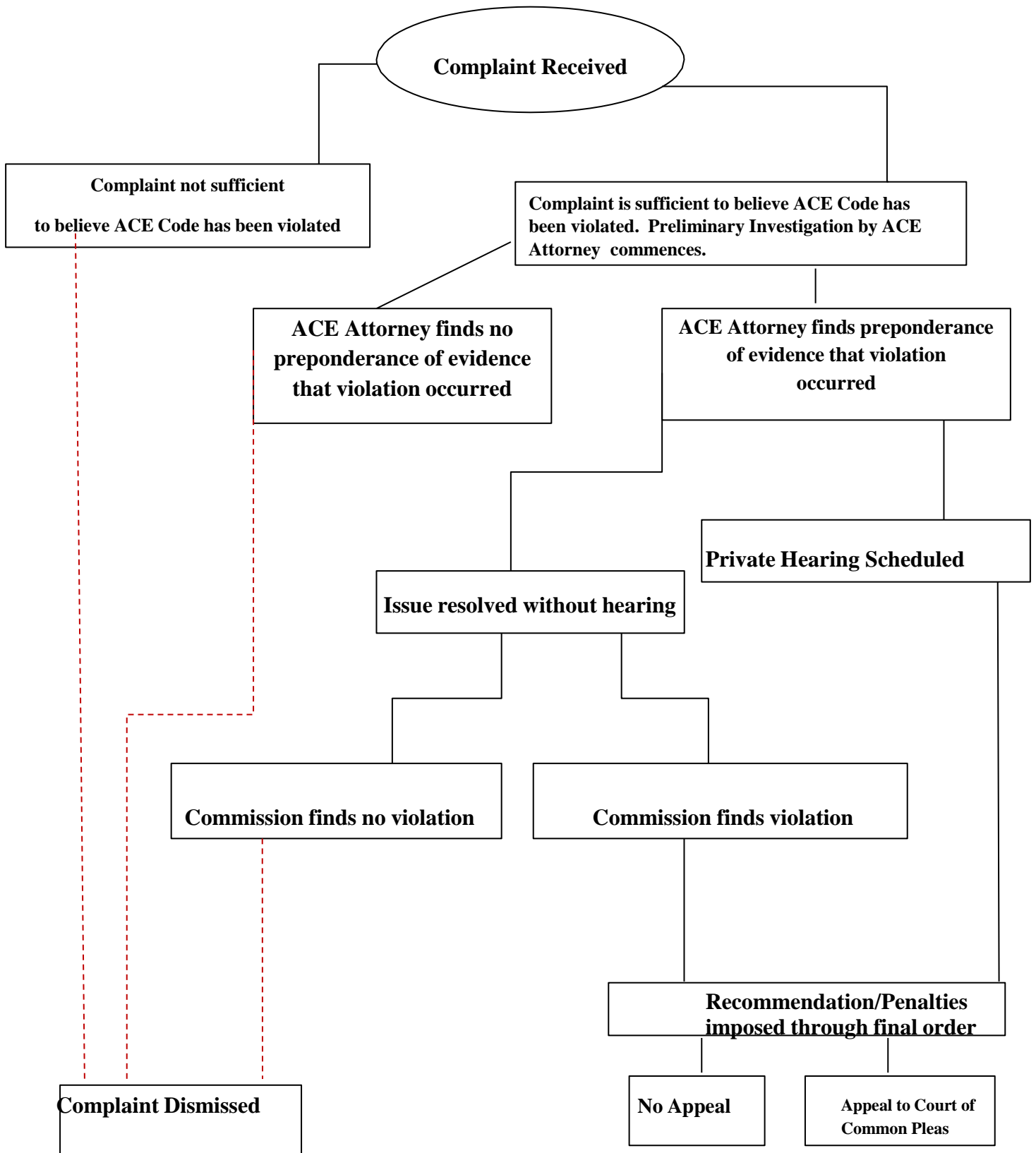
5. OATH

I, the person bringing this complaint, do hereby swear, certify and attest that the facts set forth in this Complaint and attachments are true and correct, to the best of my knowledge and belief. I understand that these statements of fact are being made by me subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

SIGNATURE: _____

DATE: _____

Complaint Process: Accountability, Conduct and Ethics



October 14, 2014