

A Nutshell Comparison of How Campaign, Ethics, and Lobbying Complaints are Handled Under Current Law

For the State Administration and Veteran's Affairs Interim Committee

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Process, Power, and People

What will be covered

- **Process** = how complaints are handled
- **Power** = what powers are exercised
- **People** = who exercises the power

Process: How complaints are handled

- Complaint filed directly with Court
 - No complaints handled this way
- Contested case under MAPA
 - Ethics complaints
- Non-binding administrative decision
 - Lobbying complaints
 - Campaign complaints

If filed directly in Court

- Complaint would have to be made to a prosecutor
- Prosecutor would investigate
- Prosecutor would determine whether to proceed
- Could settle with respondent or go to court action, trial

Contested Case Process - Binding - Ethics complaints

- Written complaint to Commissioner
- Commissioner may dismiss for technical insufficiency
- If similar complaint already decided, may issue summary decision
- If complaint raises new issues, Commissioner holds informal contested case hearing under MAPA (Title 2, ch. 4, pt. 6, MCA)

Contested case continued

- Formal notice of hearing to all parties
- Short statement of assertions
- Discovery process prior to hearing
- Settlement agreement authorized
- Hearing process delineated in statute
- Hearings officer presides
- Rules of evidence, cross examination
- Record of all proceedings
- Hearings officer issues BINDING final order
- Party may ask for judicial review

Cost of Contested Cases

- Estimate: \$20,000 each case
- 1 to 2 cases a year
- Additional cost to each party for hired counsel
- Commissioner is the judge

Administrative decision: Non-binding - Lobbying complaints

- Section 5-7-212 and T. 5, ch. 7, pt. 3, MCA
- COPP audits reports or receives complaint
- If discrepancy found, investigates, power to subpoena
- Non-binding finding
- May settle or initiate civil court action
 - Attorney General, county attorney, or COPP
- Citizen action authorized

Administrative decision: Non-binding - Campaign complaints

- Written complaint
- COPP reviews for technical sufficiency
- If technically sufficient, investigates
- Subpoena power
- Decision issued, not binding
 - has violation occurred and is it substantial enough to warrant a court action?
- Respondent may settle
- If no settlement, court action may be initiated

Costs of non-binding administrative decision – lobbying and campaign

- Estimated costs: \$3,500 on average
- Based on estimate of 40 decisions being issued in a year
- No costs to parties for hiring attorneys

Summary of Differences

- Ethics complaints
 - contested case process
 - binding decision
 - appeal is for judicial review only
- Lobbying and Campaign complaints
 - non-binding administrative finding
 - if not settled, may be prosecuted in court

Campaign Statements and Reports - a different animal

- Title 13, ch. 37, pt. 1
- COPP staff inspects or may receive a complaint
- Finds discrepancy
- Notifies filer
- If not corrected, order of noncompliance issued
- Filer may correct or seek judicial review of order
- Penalties if not corrected
 - Name may not appear on ballot, certificate of election may be withheld
 - Civil court action by commissioner or county attorney

Questions?