

# Appeals Process for Filing Extensions

October 3, 2016



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ETHICS ADVISORY COUNCIL

# Overview



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- Relevant Va. Code Section
- Review of Last Filing Period
- Examples of Appeals Processes from the State Board of Elections and Local School Boards
- Options for an Appeals Process for the Council
- Discussion



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# Relevant Va. Code Section

# Relevant Code Section



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- Va. Code § 30-356.2 provides that any person required to file disclosure forms pursuant to the lobbying statutes or the Conflict(s) of Interests Acts “shall be entitled to an extension where good cause...has been shown, as determined by the Council.”

# Relevant Code Section



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- Va. Code § 30-356.2 provides that—  
“Good cause shall include:
  1. The death of a relative...as relative is defined in...Article 3 or the Acts.
  2. A state of emergency is declared by the Governor...or by the President...or the governor of another state.
  3. The filer is...on active duty.
  4. A failure of the electronic filing system....”



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# **Review of Last Filing Period**

# Review of Last Filing Period



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- In the absence of an Executive Director for the Council, authority to approve or decline requests for filing extensions was delegated by the Council to the Director of the Division of Legislative Services.
- Mark Vucci, the acting Director of the Division, reviewed requests made by or on behalf of 101 individual filers.

# Review of Last Filing Period



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- Requests for filing extensions, including those requested after the filing deadline, were granted on a case-by-case basis.
- Instances where an extension was granted:
  - Individuals on disability leave;
  - Individuals under an illness;
  - Individuals working at a remote site with little access to communications (e.g., an archaeological dig).

# Review of Last Filing Period



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- Instances where an extension was granted (continued):
  - Individuals who filed the wrong form or schedule or for the wrong period of time;
  - Individuals who filed at the wrong location (e.g., filed with their local clerk instead of with the Council);
  - Individuals who encountered technical difficulties that could be confirmed; and,
  - Individuals whose filing was lost in the mail, if confirmation of the mailing could be provided.

# Review of Last Filing Period



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- Examples where an extension was not approved:
  - The filer forgot the deadline;
  - The filer's reason for missing the deadline was that the reminder email was sent to him instead of to his secretary;
  - The filer's reason for missing the deadline was that "he had meetings that week, and thought he had already completed the filing;"

# Review of Last Filing Period



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- Examples where an extension was not approved (continued):
  - The filer's reason for missing the deadline was that the reminder email ended up in a spam folder;
  - The filer claimed to have mailed his form, but offered no proof of this and the form was never received;
  - The filer claimed he tried complete the form online, but system records indicated he did not begin the process until after the deadline had passed.

# Review of Last Filing Period



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- Of the 101 requests for an extension:
  - 9 were made by the filer himself, of which 6 were granted.
  - 92 came from a person other than the filer (some were multiple requests in one email), of which 22 were granted.
- Note: included in the 92 requests was one email, made on behalf of 37 individuals, that was received at 4:34 p.m. on the day of the deadline.
  - Even though that request was denied, 22 of the filers were still able to submit their forms on time. (2 of them had already filed).
  - 3 of the individuals apparently were NOT required to file, so although they did not file, they are not counted as late.



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# Examples of Existing Appeals Processes

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- Under Va. Code § 24.2-946.4, the State Board of Elections provides instructions to filers for delivery of campaign finance reports within the time periods prescribed by law.
- Extensions can be granted, depending upon the reason (e.g., death in family, failure of the electronic filing system, state of emergency declared by governor), by the State Board or general registrar, the Commissioner of Elections, or the State Board alone.
- Once a decision is made, there are no additional appeals.

# Examples of Existing Appeals Processes



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- Under Va. Code § 22.1-277.04, if a pupil is suspended from school for a period of ten days or less, the facts of the case are presented in writing to the division superintendent or his designee.
- The superintendent shall review the record if he receives a petition for review.
- The school board for the locality may allow the superintendent's decision to be appealed to the school board, or to a committee thereof.
  - However, the school board's regulations can also provide that the superintendent's decision is final.

# Examples of Existing Appeals Processes



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- Under Va. Code § 22.1-277.05, if a pupil is suspended for more than ten days, the pupil is entitled to a hearing.
- The school board's regulations may allow the hearing to be conducted by the superintendent or his designee, or by a committee of the school board.
- However, if the superintendent is given this authority, his decision shall be appealable to the full school board.
- If a committee is given this authority, and their decision is not unanimous, their decision shall be appealable to the full school board.

# Examples of Existing Appeals Processes



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- Under Va. Code § 22.1-277.06, if a pupil is expelled, he is entitled to a hearing.
- The school board's regulations may allow the hearing to be conducted by a committee of the school board.
- However, if a committee is given this authority, and their decision is not unanimous, their decision shall be appealable to the full school board.
- In the event no hearing is sought, the school board shall still approve or disapprove the proposed expulsion.



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# Options for an Appeals Process

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- If 30 individuals appeal their decisions, and are given hearings of only 3 minutes each, the entire process will still take approximately 2 hours.

# Options for an Appeals Process



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- Options for an appeals process:
  - No further review; the decision made by the Executive Director is final;
  - The Council could create a committee to hear appeals;
  - The entire Council could hear appeals;
  - The Council could designate one member to review the record of the appellant’s “case,” and that member’s decision would be final.



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**Discussion**