



BOARD OF ETHICS PROCEDURAL RULES

Chapter 1. Policy and Construction.

Rule 101. Intent.

The City of Birmingham Board of Ethics (the board) promulgates these rules pursuant to the City of Birmingham's Code of Ethics with the intent of realizing the policies and goals set forth in that code and in the board's own mission statement. The board intends to conduct its business consistent with all applicable federal, state and local laws.

Rule 102. Construction.

These rules are to be construed to achieve the timely, efficient and cost-effective determination of matters brought before the board.

Rule 103. The board may modify these rules on a case-by-case basis to further this policy.

Chapter 2. Procedure for Obtaining Advisory Opinions.

The rules of this chapter apply to the situation where a city official or employee, the City Commission, or another city commission, board or committee, as defined in the Code of Ethics ("the requesting party"), requests an advisory opinion as to whether the requesting party's conduct or anticipated conduct, or that of a city official, employee, commission, board or committee under the requesting party's authority, conforms to the Code of Ethics. The party whose conduct is sought to be reviewed, if it is someone other than the requesting party, is called the "subject party."

Rule 201. Request for Advisory Opinion.

The request for advisory opinion must be in writing and filed with the city clerk on a form prescribed by the clerk who will present it to the board for consideration. The requesting party may include with the request any documents that may assist the board in responding to the request.

Rule 202. Dismissal.

- a. The city clerk may administratively dismiss a request for an advisory opinion if the request fails to comply with Rule 201 of this Chapter.
- b. The board may administratively dismiss a request for an advisory opinion for either of the following reasons:

- (i) One or more requests or complaints regarding the same matter are pending.
- (ii) The board previously addressed the subject matter.

Rule 203. Additional Information.

Upon presentation of a request for an advisory opinion, the board may direct the city clerk to obtain additional information regarding the request.

Rule 204. Summary Decision.

At any time, the board may issue an advisory opinion decision on the request based on any of the following reasons:

- a. The board lacks jurisdiction over the requesting or subject party.
- b. The board lacks jurisdiction over the subject matter.
- c. The requesting party lacks the legal capacity to request an advisory opinion.
- d. The request for an advisory opinion is barred because of release, prior judgment, or other disposition of the matter before the request for an advisory opinion was filed.
- e. The request for advisory opinion on its face fails to demonstrate any violation of the code of ethics.

Rule 205. Summary Opinion.

If no genuine issue as to any material fact exists, the board may issue an advisory opinion without a hearing.

Rule 206. Scheduling.

If the request for an advisory opinion is not resolved under Rule 204 or 205, the board may schedule a meeting or hearing in accordance with the Rules of this Chapter.

Rule 207. Meeting Date.

The clerk will set the matter for meeting on a date certain and place the matter on the board's calendar. The board may hold a hearing to review, or further review, the merits of a request for an advisory opinion.

Rule 208. Notice of Meeting and Requests to Others to Appear.

The clerk will send notice of the meeting to the requesting party and, where applicable, to the subject party in the manner prescribed by the Code of Ethics. The board may request other persons to appear at the meeting by directing the clerk to send notice of the meeting and a request to appear, accompanied by a copy of the request for advisory opinion.

Rule 209. Appearance of Requesting Party, Subject Party, or Representative.

The requesting party and, where applicable, the subject party, or a representative of either, may appear at the meeting, present information to support or oppose the request, and respond orally to questions presented by the board.

Rule 210. Meetings, Generally.

The board will conduct a meeting on the matter set forth in the request for advisory opinion at the scheduled time. Any person requested to appear at the meeting may be accompanied by an attorney.

Rule 211. Presiding Officer.

The Chairperson of the board will act as the presiding officer for the meeting or may assign another member of the board to be the presiding officer. The presiding officer will officiate over the meeting; moderate the questions and answers between members of the board, the requesting party, the subject party, and any other witness; and rule on questions of procedure and the admissibility of evidence. The presiding officer will consult with other members of the board before making any decision.

Rule 212. Presentation of the Request and the Evidence.

The requesting party will present the request by stating the issue to be resolved and giving any evidence that bears on the matter. The subject party, where applicable, may likewise present any evidence that bears on the matter. The board may request the testimony of other witnesses and the introduction of exhibits or other evidence relevant to the matter. The requesting party, the subject party, and any member of the board may question any witness in the manner directed by the presiding officer. All witnesses will give testimony on sworn oath or affirmation.

Rule 213. Post-Meeting Evidence.

The board may request the requesting party, the subject party where applicable, or any other person to submit post-meeting evidence if warranted.

Rule 214. Closure of the Record.

The record is closed at the conclusion of the meeting or, if the board requests any person to submit post-meeting evidence, at the earlier of the submission of the evidence or the deadline for submitting it. The board may re-open the record and take additional evidence before rendering its decision.

Rule 215. Advisory Opinion.

The board will determine whether the conduct or anticipated conduct of the requesting party or the subject party, as the case may be, conforms to the Code of Ethics. The board will make its decision upon a vote of a majority of the board based upon the evidence in the record and controlling law. The board will issue its decision in the form of a written advisory opinion. The advisory opinion, and any dissenting or concurring opinion, will be stated in writing. Once they are issued, the opinions are final.

Rule 216. Transmittal of the Advisory Opinion or Order.

The board will send its advisory opinion or order to the city clerk, who will publish, distribute and keep it in the manner prescribed in the ordinance and in conformity with applicable law. The clerk will mail the requesting party, the subject party, the affected department, and other persons as the board directs, a copy of the opinion or order.

Chapter 3. Procedure for Resolving Complaints.

The rules in this chapter apply to the situation where any person has a complaint against a city official or employee, as defined in the Code of Ethics, alleging that the conduct of that official or employee is in breach of the code.

Rule 301. Filing of Complaint.

A person with a complaint involving the applicability of any provision of the Code of Ethics with respect to the conduct of a city official or employee may bring the matter before the board by filing with the city clerk a complaint on a form prescribed by the clerk. The person who files the complaint is called the "complainant." The person who is alleged to have breached the code is called the "respondent."

Rule 302. Dismissal.

- a. The city clerk may administratively dismiss a complaint if it fails to comply with Rule 301 of this Chapter.
- b. The board may administratively dismiss a complaint for either of the following reasons:
 - (i) One or more complaints or requests for advisory opinions regarding the same matter are pending.
 - (ii) The board previously addressed the subject matter.

Rule 303. Additional Information.

Upon the filing of a complaint, the board may direct the city clerk to obtain additional information regarding the request.

Rule 304. Summary Decision.

At any time, the board may issue a decision on the complaint based on any of the following reasons:

- a. The board lacks jurisdiction over the respondent.
- b. The board lacks jurisdiction over the subject matter.
- c. The complainant lacks the legal capacity to assert the complaint.
- d. The complaint is barred because of release, prior judgment, or other disposition of the complaint before the complaint was filed.
- e. The complaint on its face fails to demonstrate any violation of the code of ethics.

Rule 305. Summary Opinion.

If no genuine issue as to any material fact exists, the board may issue a decision on the complaint without a hearing.

Rule 306. Scheduling.

If the complaint is not resolved under Rule 205 and 206, the board may schedule a meeting or hearing in accordance with the Rules of this Chapter.

Rule 307. Hearing Date.

Within seven (7) days of the filing of the complaint, the clerk will set the matter for hearing on a date certain and place the matter on the board's calendar in accordance with the ethics ordinance and these procedural rules.

Rule 308. Service of Complaint on, and Notice to, Respondent.

At least twenty-eight (28) days before the hearing date, the clerk will send notice of the hearing, accompanied by a copy of the complaint to the respondent in the manner prescribed by the code.

Rule 309. Notice of Hearing to Complainant and Requests to Others to Appear.

After setting the matter for hearing, the clerk will notify the complainant of the hearing date in the manner prescribed by the Code of Ethics. The board may request other persons to appear at the hearing by directing the clerk to send notice of the hearing and a request to appear, accompanied by a copy of the complaint in the manner prescribed by the code.

Rule 310. Answer of Respondent.

Ahead of the hearing date, the respondent may submit a written answer to the complaint by filing that answer with the city clerk. In the answer, the respondent may respond to the allegations set forth in the complaint and may further provide information, including documents, relevant to the matter. In lieu of a written answer, the respondent may appear at the hearing and respond orally to the allegations in the complaint.

Rule 311. Hearings, Generally.

The board will conduct a hearing on the matter alleged in the complaint at the scheduled time. Any person requested to appear at the hearing may be represented by an attorney.

Rule 312. Presiding Officer.

The Chairperson of the board will act as the presiding officer for the hearing or may assign another member of the board to be the presiding officer. The presiding officer will officiate over the hearing and rule on questions of procedure and the admissibility of evidence. The presiding officer will consult with other members of the board before making any decision.

Rule 313. Opening Statements.

The opening statement is the parties' way to introduce the matter to the board, summarize the evidence that will be presented during the hearing, and state the relief requested. The complainant and the respondent may each give an opening statement. Usually, the complainant will give the first opening statement, but the board may vary this procedure.

Rule 314. Conduct of Proceedings

- a. The complainant will present evidence to support the complaint. The respondent may then present evidence to support any defense. Witnesses for each party will also submit to questions from the complainant, the respondent, and the board. The board has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- b. The board, exercising its discretion, will conduct the proceedings with a view to expediting the resolution of the matter and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the matter.
- c. The parties may agree to waive oral hearings in any case.

Rule 315. Evidence

- a. The parties may offer such evidence as is relevant and material to the matter and will produce such evidence as the board may deem necessary to an

understanding and determination of the matter. Conformity to legal rules of evidence will not be necessary. All evidence will be taken in the presence of the board and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

- b. The board will determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the board to be cumulative or irrelevant.
- c. The board will take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

Rule 316. Closing Statements.

When the parties have finished presenting their evidence, each may make a closing statement summarizing the evidence, stating the relief requested, and arguing in favor of that relief. Usually, the respondent will give the first closing statement, to be followed by the complainant, but the board may vary this procedure.

Rule 317. Post-Hearing Briefs.

The board may request the parties to submit post-hearing briefs if warranted.

Rule 318. Closure of the Record.

The record is closed at the conclusion of the hearing or, if the board requests the parties to submit post-hearing briefs, at the earlier of the submission of the briefs or the deadline for submitting them. The board may re-open the record and take additional evidence before rendering its decision.

Rule 319. Decision.

The board will determine whether the respondent's conduct as alleged in the complaint or demonstrated at the hearing is in breach of the Code of Ethics. The board will make its decision upon a vote of a majority of the board based upon the evidence in the record and controlling law. The board will issue its decision in the form of a written opinion. The opinion, and any dissenting or concurring opinion, will be stated in writing. Once they are issued, the decision and opinions are final.

Rule 320. Transmittal of the Decision.

The board will send its decision to the city clerk, who will publish, distribute and keep it in the manner prescribed by the ordinance and in conformity with applicable law. The clerk will mail each party, the affected department, and other persons as the board directs, a copy of the decision.

Chapter 4. Procedure for Deciding Referred Questions of Disqualification Due to Conflict of Interest.

The rules in this chapter apply to the situation where, under Section 2-324 of the Code of Ethics, a city official or employee has a conflict of interest in any matter before the city, as defined in the code, has disclosed that conflict on the appropriate records of the city, but refuses to refrain from discussion, deliberation or voting on that matter. In that instance, the affected city body may request the board to decide the question of whether the official or employee must refrain from discussion, deliberation, action or

voting on the matter because of disqualification due to a conflict of interest. The rules in this chapter contemplate that the referred question be decided on an expedited basis.

Rule 401. Referral of Question of Disqualification.

The city, its commission, or any city board or committee, which is called the "referring body," may refer to the board the question of whether an official or employee is disqualified from discussion, deliberation, action or voting on any pending matter due to a conflict of interest. The referring body will refer the question of disqualification to the board by filing the question with the city clerk on a form prescribed by the clerk. The referring body may include with the referred question any information and documents that may assist the board in answering the referred question. The person who is alleged to be disqualified due to conflict of interest is called the "respondent."

Rule 402. Dismissal.

- a. The city clerk may administratively dismiss a referred question of disqualification if the referral fails to comply with Rule 401 of this Chapter.
- b. The board may administratively dismiss a referred question of disqualification for either of the following reasons:
 - (i) One or more questions regarding the same matter are pending.
 - (ii) The board previously addressed the subject matter.

Rule 403. Additional Information.

Upon referral of a question of disqualification, the board may direct the city clerk to obtain additional information regarding the request.

Rule 404. Summary Decision.

At any time, the board may issue a decision on the referred question of disqualification based on any of the following reasons:

- a. The board lacks jurisdiction over the respondent.
- b. The board lacks jurisdiction over the subject matter.
- c. The referring body lacks the legal capacity to refer the question to the board.
- d. Decision on the question is barred because of release, prior judgment, or other disposition of the question before the question was referred.
- e. The question on its face fails to demonstrate any conflict of interest or reason for disqualification.

Rule 405. Summary Opinion.

If no genuine issue as to any material fact exists, the board may issue a decision without a hearing.

Rule 406. Scheduling.

If the referred question of disqualification is not decided under Rule 404 and 405, the board may schedule a meeting or hearing in accordance with the Rules of this Chapter.

Rule 407. Hearing Date.

As soon as practicable after the referred question of disqualification is filed, the clerk will set the matter for hearing on a date certain, which may be that very day, and place the matter on the board's calendar. The board may convene and conduct the hearing

immediately upon the clerk's receipt of the referred question, or may set another time for the hearing.

Rule 408 Notice of Hearing and Requests to Others to Appear.

The clerk will notify the referring body and the respondent of the hearing. Notice may be given orally or in any other form reasonably calculated to give the date, time, location and subject matter of the hearing. The board may request other persons to appear at the hearing by directing the clerk to notify those persons of the request and transmitting a copy of the referred question to them.

Rule 409 Hearings, Generally.

The board will conduct a hearing on the referred question at the scheduled time.

Rule 410. Presiding Officer.

The Chairperson of the board will act as the presiding officer for the hearing or may assign another member of the board to be the presiding officer. The presiding officer will officiate over the hearing, and rule on questions of procedure and the admissibility of evidence. The presiding officer will consult with other members of the board before making any decision.

Rule 411. Appearance of Referring Body and Respondent.

The referring body and the respondent may appear at the hearing, present information on the referred question of disqualification and respond orally to questions presented by the board. The referring body will designate one of its members or another person to act as its representative for the hearing.

Rule 412. Opening Statements.

The opening statement is the parties' way to introduce the question to the board, summarize the evidence that will be presented during the hearing, and state the party's position on the question. The referring body and the respondent may each give an opening statement. Usually, the referring body will give the first opening statement, but the board may vary this procedure.

Rule 413. Conduct of Proceedings

- a. The referring body will present evidence on the question of disqualification. The respondent may then present evidence to support his or her position on the question. Witnesses for each party will also submit to questions from the referring body and the respondent. The board has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- b. The board, exercising its discretion, will conduct the proceedings with a view to expediting the resolution of the matter and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the matter.
- c. The parties may agree to waive oral hearings in any matter.

Rule 414. Evidence

- a. The parties may offer such evidence as is relevant and material to the question and will produce such evidence as the board may deem necessary to an

understanding and determination of the question. Conformity to legal rules of evidence will not be necessary. All evidence will be taken in the presence of the board and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

- b. The board will determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the board to be cumulative or irrelevant.
- c. The board will take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

Rule 415. Closing Statements.

When the parties have finished presenting their evidence, each may make a closing statement, summarizing the evidence, stating the position it takes on the question, and arguing in favor of that position. Usually, the respondent will give the first closing statement, to be followed by the referring body, but the board may vary this procedure.

Rule 416. Post-Hearing Briefs.

The board may request the parties to submit post-hearing briefs if warranted.

Rule 417. Closure of the Record.

The record is closed at the conclusion of the hearing or, if the board requests the parties to submit post-hearing briefs, at the earlier of the submission of the briefs or the deadline for submitting them. The board may re-open the record and take additional evidence before rendering its decision.

Rule 418. Decision.

The board will decide whether the respondent is disqualified from discussion, deliberation, action or voting on the matter pending before the referring body due to a conflict of interest. The board will make its decision upon a vote of a majority of the board based upon the evidence in the record and controlling law. The board will issue its decision in the form of a written opinion. The opinion, and any dissenting or concurring opinion, will be stated in writing. Once they are issued, the decision and opinions are final.

Rule 419. Transmittal of the Decision.

The board will send its decision to the city clerk, who will publish, distribute and keep it in the manner prescribed in the ordinance and in conformity with applicable law. The clerk will provide the referring body, the affected department, and the respondent with a copy of the decision.

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