



CITY OF TALLAHASSEE INDEPENDENT ETHICS OFFICE

TALLAHASSEE INDEPENDENT ETHICS BOARD

Administrative Procedures

Last amended on March 16, 2021

TALLAHASSEE INDEPENDENT ETHICS BOARD
Administrative Procedures

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RULE 1.01. – SCOPE, JURISDICTION, DEFINITIONS, AND APPLICABILITY

(a) PURPOSE AND CONSTRUCTION OF RULES.

(1) These rules are adopted for the following purposes:

(A) To establish and explain the practice and procedures followed by the City of Tallahassee Independent Ethics Board (“Board”) and its employees and independent contractors performing its duties under the law; and

(B) To provide specific guidance necessary to encourage and ensure full compliance with all ordinances administered and enforced by the Board.

(2) A person’s obligation to comply with a requirement or prohibition established by ordinance exists even if this title is silent concerning a statutory requirement.

(3) These rules should always be construed in a manner consistent with all applicable constitutional and statutory requirements

(b) ENABLING LAW. These Administrative Procedures (“Procedures”), pursuant to § 61, Tallahassee Charter, shall govern the receipt and disposition of all complaints to the Board.

(c) AMENDMENT TO RULES. These rules shall be reviewed as necessary. They may be amended at any regular meeting of the Board by a majority vote of those present.

(d) JURISDICTION. The Board shall be empowered to review, interpret, render advisory opinions, and enforce the ethics code pursuant to

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the procedures established in these rules. Any alleged violation committed before the effective date of any such ordinance or amendment shall be governed by the applicable law in effect at the time of the alleged violation. Any complaint brought after five (5) years of the alleged violation will not be accepted unless there is a showing that the violation could not have been discovered due to the fraud, concealment, or intentional misrepresentation of fact by the Respondent or a person directed by the Respondent. In no event shall the Board accept a complaint brought seven (7) years after the alleged violation.

(1) In accordance with section 61 of the Charter of the City of Tallahassee, jurisdiction of the ethics code shall extend to all public officials and city employees as specified in the Ethics Code.

(2) A finding by the Board of a violation of any part of the ethics code shall subject the person or entity to only those penalties enumerated in section 2-14 of the City of Tallahassee Code of Ordinances. If authorized by ordinance, the Board may also order the person or entity to pay restitution when the person or entity or a third party has received a pecuniary benefit as a result of the person or entity's violation.

(3) A finding by the Board of a violation of any part of the ethics code by a city employee not included in the definition of a covered individual shall subject the person or entity to a remedial order.

(A) A remedial order rendered by the Board in response to allegations made against a city employee shall be subject to judicial review as provided in section 1.06.

(B) The Board shall transmit the remedial order to the city's human resources director and the employee's direct supervisor at which time the remedial order becomes final.

RULE 1.02 – ADVISORY OPINIONS.

(a) SUBJECT OF ADVISORY OPINIONS.

(1) The Board will issue a written advisory opinion on the following laws to a person qualified to make a request under paragraph B of this Rule.

(A) Ethics Code, Section 2-3, et seq., City of Tallahassee Code of Ordinances.

(B) Board, Section 2-21 et seq., City of Tallahassee Code of Ordinances.

(2) The Board will not issue an advisory opinion that concerns the subject matter of pending legal matter known to the Board.

(b) PERSONS ELIGIBLE TO RECEIVE AN ADVISORY OPINION.

(1) A person who is subject to any of the laws listed in subsection (a)(1) of this Rule may request an opinion regarding the interpretation or application of any of the ordinances under the Board's jurisdiction to himself or herself.

(c) REQUEST FOR AN ADVISORY OPINION (FORM REQUIREMENTS)

(1) All requests for advisory opinions must be in writing and contain the following information:

(A) Name, address, and telephone number of the requesting party.

(B) Status of the requesting party through which jurisdiction of the Board is invoked.

(C) A brief fact scenario forming the basis of the request for the advisory opinion. The fact scenario must contain all

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relevant information for which the requesting party seeks ethical guidance. This includes, but is not limited to, all relationships, personal and contractual, relevant to the requested advisory opinion.

(D) Advisory opinion requests may be submitted via U.S. Mail, facsimile, hand-delivery, or email directed to Ethics@Talgov.com. No request will be processed that does not contain sufficient factual or identification information as required by this section. The Ethics Officer may request additional information as necessary.

(d) ADVISORY OPINION INTAKE

(1) All requests for advisory opinions will be initially reviewed by the Ethics Officer or staff designee in a timely manner.

(2) A written acknowledgment of receipt will be sent to the requesting party by U.S. Mail, facsimile, or email response.

(3) An initial determination of jurisdiction will be made during the intake process.

(4) If jurisdiction is lacking, the requesting party will be sent a declination letter due to the lack of jurisdiction.

(5) An advisory opinion request may be withdrawn by the submitting party in writing at any time. A withdrawn advisory opinion request will remain a public record unless exempt pursuant to state law.

(e) PROCESSING ADVISORY OPINIONS

(1) Once jurisdiction and sufficient factual information are determined to exist on the face of the request, a draft advisory opinion letter will be written by the Board Counsel and reviewed by the Ethics

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Officer.

(2) The Ethics Officer will submit a draft advisory opinion, or in the alternative, the initial request for advisory opinion, directly to the Board for advice and guidance at a future public meeting.

(4) All requests for advisory opinions will be processed within a reasonable time.

(f) EXPEDITED RESPONSES

(1) When the requesting party so indicates and the facts support an expedited review of a request for advisory opinion, the Ethics Officer will confer with the Chair of the Board to determine whether to set the matter for review at the next scheduled public meeting, to set a special meeting of the Board to review the request, or to have the Ethics Officer and Board Counsel respond informally prior to the next regular meeting.

(g) ADVISORY OPINION LETTER FORM

(1) All advisory opinion letters shall contain the following:

(A) A brief recitation of the factual scenario as contained in the written request.

(B) The applicable sections of the relevant ordinances.

(C) An opinion as to whether the ordinances apply to the requesting party.

(D) An opinion as to whether the requesting party is or would be in compliance with the applicable ordinances.

(E) If deemed appropriate by the Board, additional comments regarding ethics, appearance of impropriety, or similar advice to the requesting party based upon the factual

scenario as presented.

(F) Signature of the Ethics Officer or Board Counsel.

(h) PUBLICATION OF ADVISORY OPINIONS

(1) Each advisory opinion issued by the Board shall be numbered, dated, and published on the Board's website.

RULE 1.03 – PROCEDURES ON SELF-INITIATED AND FILED COMPLAINTS.

(a) PROCESS FOR SELF-INITIATED CLAIMS. The following process will be followed for the Board to self-initiate a complaint against a person or entity under its jurisdiction.

(1) Pursuant to Section 112.324, Florida Statutes, the decision to initiate by the Board an investigation against any person or entity subject to the Ethics Code will be in a Closed Session of the Board. Any Board member desiring to initiate a Complaint shall request through the Ethics Officer that such a meeting be scheduled or that the discussion be added to the agenda for the next scheduled meeting.

(2) When a complainant submits an unsworn complaint, whether in writing or verbally, alleging facts that if true would constitute a violation of the City of Tallahassee Ethics Code, the Ethics Officer, in consultation with the Board Counsel, shall schedule a Closed Session. The Closed Session shall take place no sooner than ten (10) days and no later than forty (40) days after receipt of the complaint to discuss and consider the unsworn complaint.

(A) For purposes of this rule, any written or verbal allegation made to the Board staff, which if true would constitute a violation of the Tallahassee Ethics Code, whether in writing or verbally, shall be deemed an unsworn complaint.

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(B) For those unsworn complaints submitted verbally, the Ethics Officer shall provide a detailed summary to present to the Board at the Closed Session.

(3) While in Closed Session, the requesting Board member shall move for consideration of a written, proposed Complaint. After deliberations, the Board shall vote to take the following action:

(A) Find a proposed Complaint is legally insufficient. The Ethics Officer shall prepare a written report declaring the potential Complaint to be dismissed and shall state all relevant reasons for the finding of legal insufficiency; or

(B) Vote to find a proposed Complaint is legally sufficient and that the Board will initiate a complaint. The Chair of the Board will sign the self-initiated Complaint on behalf of the Board.

(b) FILING OF COMPLAINTS WITH THE ETHICS BOARD.

(1) Any person may file a complaint with the Board. All complaints shall be made in writing, executed on a form prescribed by the Board, and signed under oath or affirmation. In accordance with section 112.324(2)(a), Florida Statutes, all sworn complaints shall be confidential and exempt from section 119.09(1) and Art. I, sec. 24(a) of the Florida Constitution.

(c) LEGAL SUFFICIENCY OF COMPLAINTS.

(1) The Ethics Officer shall find a complaint as filed by any person under subsection (a)(1) to be legally sufficient if:

(A) The complaint is in writing and executed on the form prescribed by the Board;

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(B) The complaint alleges the elements of a violation within the jurisdiction of the Board within the complaint and/or with supporting documentation; and

(C) The complaint is signed under oath or affirmation by the Complainant.

(2) Complaints need not be as precise as would be required by the rules of civil procedure in a court of law and shall be deemed sufficient if the Complainant under oath or affirmation, upon knowledge and belief, alleges facts which, liberally construed and if true, may constitute a violation of the Ethics Code. A Complaint shall not be deemed insufficient because it is based upon evidence that would be hearsay evidence in a court of law.

(3) In order to make a determination of legal sufficiency, the Ethics Officer may request additional information from the Complainant, consult with the Board Counsel, and obtain information from public records or otherwise.

(4) Upon a finding of legal sufficiency by the Ethics Officer, the Board shall initiate a preliminary investigation.

(5) Upon a finding that a complaint is not legally sufficient, the Ethics Officer shall contact the Complainant and convey the reasons for the finding. The Complainant shall have the opportunity to cure the defect and resubmit the complaint for a determination of legal sufficiency.

(d) DOCUMENTS PROVIDED TO THE RESPONDENT.

(1) Within ten (10) business days of a finding by the Ethics Officer of legal sufficiency of a written complaint or of the self-initiation of a complaint by the Board, the Ethics Officer shall provide by certified mail to the Respondent a copy of the complaint and any supporting documentation provided with the complaint at the time of filing.

(A) The Respondent shall be entitled to submit a written response to the finding of legal sufficiency prior to the probable cause hearing. The written response shall be due no later than fifteen (15) days following the receipt of the complaint, and the failure to timely submit a written response shall constitute a waiver to be heard prior to the probable cause hearing;

(B) The right of the Respondent to submit a written response prior to the probable cause hearing and its time limitations shall be clearly noticed in the correspondence from the Ethics Officer to the Respondent accompanying the complaint.

(e) PRELIMINARY INVESTIGATION AND PROBABLE CAUSE HEARING.

(1) A preliminary investigation shall be undertaken by the Ethics Officer or a person designated by the Ethics Officer of each legally sufficient complaint over which the Board has jurisdiction to determine whether probable cause exists to believe a violation of the Ethics Code has occurred. The preliminary investigation shall be limited to the allegations of the complaint, but it shall include a review of all facts and persons materially related to the complaint at issue. The preliminary investigation shall produce all relevant facts, whether supportive of or contrary to a finding of probable cause.

(A) The Ethics Officer or person designated by the Ethics Officer may take all appropriate actions to investigate complaints, including but not limited to:

1. Review documents;
2. Interview witnesses; and
3. Subpoena documents or witnesses.

(B) The Ethics Officer or person designated by the Ethics Officer may contact city employees for interviews. Upon initial

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contact, the Ethics Officer or person designated by the Ethics Officer shall advise the witness that investigations are confidential under state law and request that the witness act accordingly.

1. The Ethics Officer or person designated by the Ethics Officer may contact city employees directly for witness interviews unless the Ethics Board or person designated by the Ethics Officer knows that the witness is represented by an attorney. When a witness is represented by an attorney, the Ethics Officer or person designated by the Ethics Officer must request the interview through the witness's attorney.

(C) Those persons subject to interview by the Ethics Officer or person designated by the Ethics Officer shall be entitled, but not required, to obtain legal counsel who may be present during the interview as an observer. Prior to the interview, the Ethics Officer or person designated by the Ethics Officer shall establish on the record that the attorney present at the interview is there as the legal representative to the witness and both the witness and attorney shall confirm the same.

(2) The Ethics Officer may appoint an Advocate who will review the narrative investigative report resulting from the preliminary investigation and make a recommendation to the Board as to whether probable cause exists to believe a violation of the Ethics Code has occurred.

(3) The Board shall conduct a Closed Session in order to determine whether probable cause exists to believe a violation of the Ethics Code has occurred. The Board shall apply a substantial evidence standard of proof.

(4) If, upon completion of the preliminary investigation, the Board finds no probable cause to believe that any violation of the ethics

code has occurred, the Board shall dismiss the complaint with the issuance of a public report to the Complainant and the Respondent, stating with particularity its reasons for dismissal. At that time, the complaint and all materials relating to the complaint shall become a matter of public record.

(5) If, upon completion of the preliminary investigation, the Board finds probable cause to believe that a violation of the ethics code has occurred, the Ethics Officer shall provide a detailed finding of probable cause to the Complainant and the Respondent in writing. Such written finding and all documents made or received in the disposition of the complaint shall then become public records.

(A) The finding of probable cause shall include a notice of rights, informing the Respondent of his or her right to a public hearing.

(f) ABEYANCE. When the Board learns that any allegations contained within the complaint filed with the Board have been filed with and/or are being considered by a federal, state, or local law enforcement agency or the state Ethics Commission, the Board shall suspend action on the complaint until the conclusion of the law enforcement agency or state Ethics Commission review, order or proceedings.

RULE 1.04 - PROCEDURES FOR PUBLIC HEARINGS; RECOMMENDED ORDERS; EXCEPTIONS; FINAL AND REMEDIAL ORDERS.

(a) After a finding of probable cause by the Board, a Respondent is entitled to a public hearing on the complaint.

(1) A Respondent requesting a public hearing shall submit a Notice of Rights in writing to the Ethics Officer within 21-days of service of the finding of probable cause. The petition or request shall include:

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(A) The identification of the Respondent, including the Respondent's email address, if any, for the service and transmittal of subsequent documents by electronic means.

(B) A statement of when and how the Respondent received notice of the Ethic Board's finding of probable cause.

(C) A statement of all material facts disputed by the Respondent or a statement that there are no disputed facts.

(b) When the Respondent disputes material facts contained within the finding of probable and/or complaint, the Ethics Officer shall carefully review the petition to determine if it contains all of the required information.

(1) A petition shall be dismissed if it is not in substantial compliance with the requirements of subsection (a)(1) or if it has been untimely filed.

(A) Dismissal of a petition shall, at least once, be without prejudice to Respondent's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(B) The Ethics Officer shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition, if applicable.

(C) This subsection does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

(2) A petition disputing allegations of material fact shall be granted if is in substantial compliance with the requirements of subsection (a)(1) and has been timely filed.

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(A) Through its appointed Advocate, the Board shall request an Administrative Law Judge from the state Division of Administrative Hearings through the Division's website within 15 days after receipt of the petition or request.

(B) The Board shall take no further action with respect to the complaint referral except as a party litigant.

(c) Any public hearing before an Administrative Law Judge on a petition disputing allegations of material fact contained within the finding of probable cause and/or complaint shall be governed by the rules and procedures of sections 120.569 and 120.57(1), Florida Statutes, and chapter 28-106, Florida Administrative Code.

(1) Recordation. The Board shall be responsible for preserving the testimony at the public hearing. The public hearing shall be recorded by a certified court reporter or by recording instruments.

(2) Post-hearing submittals. All parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues with the Administrative Law Judge. At the conclusion of the public hearing, the Administrative Law Judge shall establish a deadline for submission. Unless authorized by the Administrative Law Judge, proposed orders shall not exceed 40 pages.

(3) Recommended Order. The Administrative Law Judge shall, within 30 days of receipt of the hearing transcript or the final proposed recommended order, whichever is later, file a recommended order, which shall include a caption, time and place of hearing, appearances entered at the public hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and recommendation for final action by the Board.

(A) For recommended orders entered in matters involving a public official, the Administrative Law Judge shall apply a clear

and convincing standard of proof. For remedial orders entered in matters involving a city employee, the Administrative Law Judge shall apply a preponderance of the evidence standard of proof.

(4) Exceptions and Responses. The Advocate and/or Respondent may file exceptions to findings of fact and conclusions of law contained in the recommended order. The exceptions shall be filed with the Ethics Officer and served on all parties no later than 15 days after the entry of the recommended order. Any party may file responses to another party's exceptions no later than 10 days after the date when the exceptions were filed with the Ethics Officer.

(d) Unless the time period is waived or extended with the consent of all parties, the final or remedial order by the Board shall be in writing and include findings of fact, if any, and conclusions of law, separately stated, and it must be rendered within 90 days:

(1) After the public hearing is concluded, if the public hearing is conducted by the Board;

(2) After a recommended order or exceptions, whichever is later, is submitted to the Board and mailed to all parties, if the public hearing is conducted by an Administrative Law Judge; or

(3) After the Respondent has waived his or her right to a public hearing.

RULE 1.05 - JUDICIAL REVIEW.

(a) Any final or remedial order of the Board entered pursuant to this division shall be subject to review in the circuit court upon the petition of the party against whom an adverse opinion, finding, or recommendation is made. Such action shall be subject to the Florida Rules of Appellate Procedure.

(b) In accordance with the Florida Rules of Appellate Procedure, any final or remedial order of the Board may be appealed by filing a petition for

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writ of certiorari in the Second Judicial Circuit in and for Leon County within 30 days of rendition.

(1) The final or remedial order shall be deemed rendered at the time of its adoption by the Board and signature of the Board Chair, whichever occurs later.

(2) In accordance with the Florida Rules of Appellate Procedure, the Board shall not be required to prepare a record or record index to the circuit court.

(3) The Respondent or Appellant shall submit an appendix in accordance with rule 9.220, Florida Rules of Appellate Procedure. Supplemental appendices may be submitted by any party. Appendices may not contain any matter not made part of the record before the Board.

These Administrative Procedures were adopted on June 18, 2019 and most recently amended on March 16, 2021 by the Tallahassee Independent Ethics Board.

Revision History:

March 16, 2021 (Rule 1.03(d).)
October 20, 2020 (Rule 1.03(a) and (e).)
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