

RULES OF PROCEDURE
OF THE
HOWARD COUNTY
ETHICS COMMISSION
~~AMENDED~~

Amended

December 21, 1993

Second Amendment

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CHAPTER 1 — GENERAL PROVISIONS

01— Authority and Purpose.

These Rules of Procedure are adopted pursuant to the “Administrative Procedures Act” of the *Howard County Code*. The purpose of these Rules of Procedure is to set forth the procedures under which the Howard County Ethics Commission will implement the provisions of the Howard County Public Ethics Law (Subtitle 2 of Title 22 of the *Howard County Code*) as they relate to persons within its jurisdiction.

02— Definitions.

A. Advisory Opinion: ~~means an a written~~ opinion, ~~letter, or memorandum~~ issued pursuant to Section 22.203(g)(5) of the Public Ethics Law.

B. Commission: ~~means~~ the Howard County Ethics Commission established pursuant to Section 22.203 of the Public Ethics Law.

C. Complainant: ~~means~~ the person filing a Complaint or the Commission itself if the Commission files a Complaint pursuant to Section 22.203(g)(6) of the Public Ethics Law.

D. Complaint: ~~means~~ a writing, under oath, presented to the Commission alleging a violation of the Howard County Public Ethics Law.

E. Decision and Order: ~~means~~ the ~~Commission's~~ Commission's final determination of a Complaint.

F. Executive Secretary: The County Solicitor shall designate an Executive Secretary. The Executive Secretary may also serve as the legal advisor to the Commission.

~~F.~~ F. Legal Advisor: ~~means~~ an attorney in the Office of Law who serves as a legal advisor to the Commission. The attorney may also serve as the Commission's Executive Secretary.

~~G.~~ G. Proponent: ~~means~~ the attorney who prepares ~~the case~~ and presents evidence to the Commission to prove the allegations contained in ~~a~~ Complaint.

~~H.~~ H. Public Ethics Law: ~~means~~ the Howard County Public Ethics Law, codified as Subtitle 2, Public Ethics, of Title 22 of the *Howard County Code*.

~~I.~~ I. Requester: ~~means~~ a person requesting an Advisory Opinion.

~~J.~~ J. Respondent: ~~means~~ the subject of a Complaint alleging a violation ~~of the~~ Public Ethics ~~Law.~~ Laws.

~~K.~~ K. Staff Attorney: ~~means/Investigator:~~ an attorney in the Office of Law who ~~investigates and reviews Complaints referred to the Commission.~~

~~L.~~ Staff Investigator: ~~means an employee in the Office of Law who~~ conducts ~~investigations~~ investigation and preliminary inquiries on matters at the request of the Commission.

~~1.03~~ 1.03 Organization.

~~A.~~ A. Chairperson; Vice-Chairperson. The Chairperson and Vice Chairperson of the Commission shall be elected by the Board members annually in November of each year. The term of the Chairperson and Vice Chairperson shall be from January through December. The Chairperson shall have the duty and responsibility for the overall administration of the Board's activities. The Vice Chairperson shall preside at meetings and perform the other duties of the Chairperson when the Chairperson is unable to be present.

~~B.~~ B. Executive Secretary. The County ~~Executive~~Solicitor shall designate an Executive Secretary who shall attend all meetings. The Executive Secretary shall be responsible for handling the administrative ~~matter~~smatters for the Commission and maintaining the ~~Commission's~~Commission's records. The Executive Secretary ~~shall appoint a person who, or his/her designee,~~ shall be responsible for ~~the~~recording minutes of meetings and proceedings. The Executive Secretary will forward copies of correspondence sent by the Ethics Commission and all correspondence received that is addressed to the Ethics Commission.

~~C.~~ C. Commission Meetings and Hearings. The Commission shall meet at the call of its Executive Secretary, the Chairperson or a majority of its members-, at the time and location specified. Meetings shall be open unless closed to comply with the requirements of the Public Ethics Law and as otherwise permitted pursuant to ~~Subtitles~~Subtitle 5 of Title 10 of the State Government Article of the Maryland Annotated Code. The Commission may ~~meet~~be in closed ~~session~~sessions to consider an advisory opinion request to the extent that consideration of the request would necessarily lead to identification of the subject of the request. The Commission shall meet in closed session to consider Complaints and conduct hearings on a Complaint.

D. The Commission shall maintain an official record of all meetings and prepare and maintain minutes as required by the Maryland Open Meetings Act. Closed session minutes will also be prepared in compliance with the Open Meetings Act. The Executive Secretary shall provide the minutes to the Ethics Commission for adoption.

~~D.~~ E. Voting; Quorum. A quorum ~~shall~~consists of three ~~or more~~Commission members: whether in person or by electronic or telephonic means. A quorum shall be present before the Board can hold a meeting. An affirmative vote of at least three members shall be necessary for any action of the Commission. The Chair may make motions and vote on

all items. A tie vote by the Commission shall be interpreted as a defeat of the motion upon which the vote was taken. In order to be put to vote, a motion must have a second. Members' votes shall be recorded on each motion.

CHAPTER 2 — ADVISORY OPINIONS

.01— Who May Request.

~~A.~~ A. Any person subject to the provisions of the Public Ethics Law may request an Advisory Opinion concerning application to him/her of the provisions of the Public Ethics ~~law~~Law. The Commission may, in its discretion, grant requests from individuals who are considering a position with the County and would like to prospectively resolve a potential conflict.

~~B.~~ B. Advisory Opinions may be requested by an official or employee of the County as to the matters covered by the Public Ethics ~~law~~Law concerning another official or employee ~~under his/her supervision.~~

.02— Relationship to Investigatory Process.

It shall be the general practice of the Commission to consider Advisory Opinion requests dealing with non-speculative fact situations and to render opinions having prospective application. If an opinion request requires consideration of past behavior or events, the Commission may consider the request in the context of a preliminary inquiry pursuant to the ~~Commission's~~Commission's authority to issue complaints on its own motion.

.03— Form.

All requests for Advisory Opinions shall be in writing addressed to the Howard County Ethics Commission, Executive Secretary, George Howard Building, ~~3430~~3450 Courthouse Drive, Ellicott City, Maryland 21043, or sent via electronic means to the Commission's Executive Secretary. The request shall include the signature, address, ~~and~~ telephone number, and email

address of the ~~Requestor~~Requester and shall set forth the facts and circumstances giving rise to the request.

.04— Review Procedures.

~~A.~~ A. Each Advisory Opinion request shall be acknowledged by the Executive Secretary. When the request is from a person other than the official, employee or lobbyist whose conduct is the subject of the request, the Executive Secretary shall provide the person who is the subject of the request ~~shall be provided~~ with a copy of the request and acknowledgment letter.

~~B.~~ B. When an Advisory Opinion request presents facts and raises issues that have been addressed in a previously issued opinion of the Commission, the Commission may direct the Executive Secretary to transmit the existing opinion with an advisory letter, which carries the ~~acknowledgments~~same weight as an ~~expedited informal response to the~~ opinion ~~request~~request and can be relied upon by the Requestor.

~~C.~~ C. The Commission shall review the information set forth in the request and obtain other ~~reasonably~~reasonable, obtainable facts which allow the Commission to evaluate the conduct or activity in relation to the substantive provisions of the Public Ethics Law.

~~D.~~ D. Advisory opinion requests shall be considered by the Commission at a scheduled meeting. The person whose conduct is the subject of the request may appear at the Commission meeting considering the request and be represented by legal counsel in connection with the appearance. The Commission may also request the attendance of the Requester or of any other person who can provide information relevant to its determination.

.05— Issuance of Opinion.

~~A.~~ An Advisory Opinion shall be issued within sixty (60) days of receipt of the request (or more promptly if circumstances require it). Each opinion ~~shall be in writing~~ and be

~~dated, and shall contain the names of all members of the Commission present at the meeting at which the opinion request was decided and who subscribed to the opinion.~~
The name of any dissenter to an opinion shall be separately noted. Each All Advisory ~~Opinion~~Opinions shall be written, ~~to the~~ without disclosing the names of any persons involved in order to maintain confidentiality. To the fullest extent possible, ~~so as to prevent disclosure of any other information that may identify the identity of requestor shall not be included in the subject of the written~~ opinion.

B. _____ Advisory Opinions shall be filed with the Executive Secretary and mailed to the subject of the request and the Requester, if different. The Commission may, in its discretion, send a copy of the Advisory Opinion to the Requestor's supervisor or department head.

C. _____ C. The ~~opinion~~Opinion rendered is binding on the Commission ~~if~~ any subsequent investigation or complaint proceeding concerning the official or employee who requested the opinion or who was the subject of the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for an advisory opinion ~~or in statements made to the Commission concerning the situation under advisement.~~

D. _____ The Commission shall publish, or otherwise make available to the public, copies of the Advisory Opinions, with the identities of the subjects deleted.

CHAPTER 3 — COMPLAINT PROCEDURES

.01— Filing of Complaint.

~~A.~~ A. The Commission on its own motion may file a Complaint alleging a violation of any of the provisions of this subtitle, or any person may file with the Commission a Complaint alleging a violation of any of the provisions of ~~this subtitle~~ the Public Ethics Law.

B. The Complaint shall be in writing, signed, and under oath, and ~~alleges~~ shall contain sufficient facts alleging a violation of the Public Ethics ~~Law~~ law by an official or employee or by any other person subject to the jurisdiction of the Commission. ~~A~~ The Complaint shall ~~contain sufficient facts~~ be submitted on a form provided by the Commission or in a form acceptable to permit a preliminary investigation ~~the Commission~~.

C. Upon receipt of a Complaint which does not assert a violation of the Ethics Code, after notice the Commission Members, the Executive Secretary may respond to ~~be undertaken~~ the Complainant explaining that the Complaint is dismissed as it is not within the jurisdiction of this Commission.

D. Upon receipt of a Complaint, the Commission shall notify the subject of the Complaint in writing by providing the subject of the Complaint with a copy of the Complaint. The notification shall include a cover letter sent by the Executive Secretary outlining the confidential nature of the process and the relevant procedures.

~~B.~~ E. The Commission may reject without further proceedings any Complaint which, is not filed under oath, it deems to be plainly frivolous or which, assuming the facts alleged were true, does not state a violation of the Public Ethics Law. If the Complaint is dismissed by the Commission, the Commission shall send a letter to the Complainant and the subject of the Complaint notifying them of the action taken by the Commission.

~~C.~~ Complaints may be referred to a Staff Investigator, Staff Attorney, or independent legal counsel if appropriate, for investigation and review.

F. The Commission may refer the Complaint to the County Solicitor and request an investigation into the allegations in the Complaint. The Commission may request an investigative report to be filed within 45 days from the date the Commission requested such investigation, or upon request, at a date thereafter for cause.

~~D.~~ G. If, after receipt of an investigative report, the Commission determines that there are insufficient facts upon which to base a determination of a violation, the Commission may dismiss the Complaint. If the Complaint is dismissed, the Commission shall send a letter to the Complainant and the subject of the Complaint notifying them of the action taken by the Commission.

~~E.~~ H. If, based on the facts alleged in a Complaint or after receipt of an investigative report, there is a reasonable basis for believing a violation of the Public Ethics Code has occurred, then the subject of the Complaint shall be afforded an opportunity for a hearing conducted in accordance with the rules and procedures of the Commission.

.02— Time and Notification of Complaint Hearings.

~~A.~~ A. The Respondent or ~~Counsel~~counsel for the Respondent shall be promptly notified in writing ~~of~~by first-class mail, postage pre-paid, and or via electronic notification, of the time, date and location of the hearing. To the extent possible, the Respondent shall be given thirty (30) days written notice of the time, date and location of the hearing.

~~B.~~ B. A copy of the Complaint, together with a statement of the provisions of the ~~Law~~law which are alleged to have been violated, shall accompany the notice of the hearing.

~~C.~~ C. When an attorney representing a Respondent wishes to appear in a representative capacity, the attorney shall file with the Commission a written notice of such appearance.

D. The Respondent may file a written Answer to the Complaint which shall be received by the Executive Secretary at least three (3) business days before the scheduled hearing.

~~D.~~ E. Once an attorney has filed a notice of appearance, all notices and correspondence shall be givensent to the attorney.

.03— Conduct of Hearing.

~~A.~~ A. The ~~Commission's~~Commission's Chairperson shall convene the hearing and read the Complaint allegations. The Commission Chairperson shall have the power to make evidentiary ~~rulings~~rules, rulings on motions and preliminary matters of a procedural nature, to take action to avoid unnecessary delay in the disposition of proceedings, and to maintain order.

~~B.~~ B. The Proponent shall present to the Commission evidence relating to the Complaint.

~~C.~~ C. The Respondent may present evidence on his/her own behalf or through an attorney admitted to practice law before the Court of Appeals ofin Maryland.

~~D.~~ D. Any evidence which would be admissible under the rules of evidence applicable in judicial and administrative proceedings in the State of Maryland shall be admissible in hearings before the Commission. The Commission is not bound by the technical rules of evidence but will apply those rules so that probative evidence may be conveniently brought forth. The Commission may exclude immaterial or unduly repetitious testimony and other evidence and may limit the number of witnesses when testimony is cumulative in nature. Public records, previous advisory opinions and decisions of the Commission, and laws and regulations of Howard County which pertain to the particular case shall be received by reference for the Commission'sCommission's consideration.

~~E.~~ E. The Commission ~~must~~may take notice of judicially cognizable facts of general~~ly~~, technical, or scientific facts within their specialized knowledge. Commission members may utilize their experience, technical competence, and special knowledge in the evaluation of the evidence presented to them~~ly~~.

~~F.~~ F. An individual testifying shall give his/her name and address and take the following oath given by the Chairperson: "“Do you solemnly promise to speak truthfully in the testimony you are about to give?””

~~G.~~ G. The Commission Chairperson may designate another Commission member to preside at a Commission hearing. The member so designated may exercise all of the powers assigned to the Chairperson.

~~H.~~ H. The ~~Commission~~Executive Secretary shall maintain an official record of its ~~proceedings~~proceeding in each contested case. This record shall include testimony and exhibits and a recording of the ~~proceedings~~hearing. Transcriptions of testimony shall be made available if requested. The transcribed testimony may be obtained from the Executive Secretary ~~of~~ of the Commission upon payment in advance of the cost of transcribing the record. The transcriber shall certify the accuracy of any transcript.

~~.04~~ .04 Order of Presentation of Evidence.

~~A.~~ A. Opening Statements

~~B.~~ Proponent's B. Proponent's Presentation:

~~a.~~ (1) Direct examination of witnesses.

~~b.~~ (2) Cross examination of witnesses by Respondent and Commission Members.

~~c.~~ (3) Re-direct examination.

d. _____ (4) Re-cross examination.

e. Respondent's C. Respondent's Presentation:

a. _____ (1) Direct examination of witness.

b. _____ (2) Cross ~~Examination~~examination of witnesses by Proponent and Commission members.

c. _____ (3) Re-direct examination.

d. _____ (4) Re-cross examination.

e. Proponent's D. Proponent's Rebuttal. The Proponent may present evidence to rebut any evidence introduced by the Respondent, but no new evidence may be introduced at this time.

f. Respondent's E. Respondent's Rebuttal. The Respondent may present evidence to rebut any evidence introduced by the ~~proponent~~Proponent in rebuttal, but no new evidence may be introduced at this time.

g. Proponent's F. Proponent's Summation.

h. Respondent's G. Respondent's Summation.

.05— Commission Decision.

A. _____ A. The Decision and Order of the Commission shall be in writing, approved by a quorum and signed by ~~a majority~~the Chairman of the Commission, or his/her designee, and shall be accompanied by findings of fact and conclusions of law. The Decision and Order shall be made part of the record of proceedings and shall be filed ~~and~~ maintained by the Executive Secretary as part of the official record. Each case shall be decided and the final Decision and Order shall be issued not later than thirty (30) days after the conclusion of the hearing, unless the

Commission, upon its own motion, extends the time of its Decision and Order for a period not exceeding sixty (60) days from the end of the hearing date.

~~B.~~ B. A copy of the ~~Commission's~~Commission's Decision and Order shall be mailed to all parties and published or otherwise made available to the public, upon request at a reasonable cost: for copying, if required.

~~C. Any Commission member absent from all or any part of a hearing may take part in the Commission's decision by listening to the recording of the hearing and reviewing the exhibits presented in the case. Any absent Commission member who takes part in the Commission's decision shall certify in the Decision and Order that he/she listened to the recording of the hearing and reviewed the exhibits in the case prior to rendering a decision.~~

~~D.~~ C. If the Commission concludes that the Respondent has not violated any of the provisions of the Public Ethics Law, it shall enter an order dismissing the complaint and shall advise the parties-.

~~E.~~ E. If the Commission concludes that the Respondent has violated any of the provisions of the Public Ethics Law, it may take any enforcement action provided for in accordance with Section 22.208 of the Public Ethics Law-.

~~.06—~~ Confidentiality.

During the pendency of a Complaint, all proceedings relating to a Complaint, including a preliminary inquiry following the filing of a Complaint, hearings, meetings, ~~and~~ activities of the Commission and its staff in connection with the Complaint shall be conducted in a confidential manner. The final Decision and Order of the Commission, however, shall be public.

make evidentiary rulings, rulings on motions and preliminary matters of a procedural nature, to take action to avoid unnecessary delay in the disposition of proceedings, and to maintain order.

~~B.~~ B. The ~~Requester~~Requestor shall present to the Commission evidence relating to the waiver request.

~~C.~~ C. The ~~Requester~~Requestor may present evidence on his/her own behalf or through an attorney admitted to practice law ~~before the Court of Appeals of~~in Maryland.

~~D.~~ D. Any evidence which would be admissible under the rules of evidence applicable in judicial and administrative proceedings in the State of Maryland shall be admissible in the public hearing before the Commission. The Commission is not bound by the technical rules of evidence but will apply those rules so that probative evidence may be conveniently brought forth. The Commission may exclude immaterial or unduly repetitious testimony and other evidence and it may limit the number of witnesses when testimony is cumulative in nature. Public records, previous advisory opinions and decisions of the Commission, and laws and regulations of Howard County which pertain to the particular case shall be received by reference for the Commission'sCommission's consideration.

~~E.~~ E. The Commission may take notice of judicially cognizable facts of general, technical, or scientific facts within their specialized knowledge. ~~Commission members may utilize their experience, technical competence, and special knowledge in the evaluation of the evidence presented to them.~~

~~F.~~ F. An individual testifying shall give his/her name and address and take the following oath given by the Chairperson: "Do you solemnly promise to speak truthfully in the testimony you are about to give?"?"

~~G.~~ G. The Commission Chairperson may designate another Commission member to preside at a Commission hearing. The member so designated may exercise all of the powers assigned to the Chairperson.

~~H.~~ H. The Commission shall maintain an official record of its proceedings in each case. This record shall include testimony and exhibits and may include a recording of the proceedings. Transcriptions of testimony shall be made available if requested. The transcribed testimony may be obtained from the Executive Secretary of the Commission upon payment in advance of the cost of transcribing the record. The transcriber shall certify the accuracy of any transcript.

~~I.~~ I. Individuals attending the public hearing shall sign up if they wish to testify; however, if a hearing is continued to a later date, only individuals who have signed up to testify at the first hearing will be permitted to testify at any subsequent hearing on the same case, unless called on rebuttal.

~~J.~~ J. The order or procedure for the conduct of the public hearing and presentation of evidence shall be as follows:

~~a.~~ (1) Disposition of all outstanding preliminary matters;

~~b.~~ (2) Opening statements;

~~c.~~ Requester's (3) Requestor's Presentation;

~~d.~~ (4) Presentation by interested persons;

~~e.~~ Requestor's (5) Requestor's Rebuttal;

~~f.~~ (6) Interested ~~persons'~~persons' rebuttal;

~~g.~~ (7) Closing arguments/summation.

~~K.~~ K. Individuals wishing to question a witness may do so with the leave of the Chairperson. The Chairperson may grant this leave after recognizing the individual who wishes to question the witness. Questions shall be brief, pertain to only statements made by the witness, and shall not be preceded by statements or speeches.

.05— Application of Criteria.

 The Commission shall consider the following criteria in determining whether or not the outside employment or interest violates the public interest:

~~A.~~ A. Whether the ~~employee's~~ employee's or ~~official's~~ official's duties with the County significantly impact on the entity in which a financial interest is held or on the outside employer or on the contract or proposed contract between the County and the entity or outside employer.

~~B.~~ B. Whether the employee or official is directly supervised by a person who has duties that significantly impact on the entity or on the outside employer or on the contract or proposed contract.

~~C.~~ C. Whether the employee or official supervises a person who has duties that significantly impact on the entity or on the outside employer or on the contract or proposed contract.

~~D.~~ D. Whether the employee or official is affiliated with the department, office or agency within the County that exercises authority over the entity or over the outside employer or is involved in contracts with the outside employer or entity.

~~E.~~ E. Whether the employee or official has complied with other relevant sections of the public ethics law relating to the matters involved.

~~F.~~ F. Whether the ~~employee's~~ employee's or ~~official's~~ official's financial interest in an outside entity or outside employment involves substantive non-ministerial duties which significantly relate to the ~~County's~~ County's authority over the outside ~~employee~~ employer or entity.

~~G.~~ G. Whether the ~~employee's~~ employee's or ~~official's~~ official's private compensation is funded to any significant extent by the County contract(s).

~~H.~~ H. Whether the ~~employee's~~ employee's or ~~official's~~ official's specific employment circumstances otherwise, raise a conflict of interest or appearance of conflict as contemplated by Section 901(b) of the Howard County Charter and Sections 22.201 and 22.204 of this subtitle.

.06— Commission Decision.

~~A.~~ A. The Decision and Order of the Commission shall be in writing, signed by a ~~majority~~ the Chair of the Commission, or his/her designee, on behalf of the Commission and shall be accompanied by findings of fact, conclusions of law and reasons for the ~~Commission's~~ Commission's decision. The Decision and Order shall be made part of the record of proceedings and shall be filed and maintained by the Executive Secretary as part of the official record. Each case shall be decided and the final Decision and Order shall be issued not later than forty-five (45) days after the conclusion of the public hearing.

~~B.~~ B. A copy of the ~~Commission's~~ Commission's Decision and Order shall be mailed to all interested parties and made available to the public at a reasonable cost.

~~C. Any Commission member absent from all or any part of a hearing may take part in the Commission's decision by listening to the recording of the hearing and reviewing the exhibits presented in the case. Any absent Commission member who takes part in the Commission's decision shall certify in the Decision and Order that he/she listened to the~~

~~recording of the hearing and reviewed the exhibits in the case prior to rendering a decision.~~

C. .07— Closed Session.

The Commission may meet in closed session ~~to discuss evidence it received in the~~ for any enumerated reason under the Open Meetings Act.

CHAPTER 5: ENFORCEMENT

.01 Upon a finding of a violation of any provision of this Public Ethics Law, the Commission may proscribe any enforcement provision outlined in section 22.208 of the Howard County Code.

ROLE OF LEGAL ADVISOR AND EXECUTIVE SECRETARY

Legal Advisor duties:

- Provides legal research and advice to the Commission
- Responds to general inquiries regarding interpretation of the Ethics Code
- Drafts advisory opinions and informational memos
- Attends monthly meetings
- Ensures compliance with Open Meetings Act
- At direction of the Commission, drafts proposed ethics legislation

Executive Secretary duties:

- Supervises and coordinates the filing and implementation of automated financial disclosure statements
- Revises financial disclosure statements to conform to the law
- Responds to inquiries regarding substantive law-related matters relating to Financial Disclosure Statements and lobbying reports
- At direction of the Commission, coordinates ~~public hearing as well as conducting deliberations to reach~~ information activity
- Coordinates requests for advisory opinions and complaints
- Prepares meeting agendas and scripts for the Chair
- Prepares minutes of monthly meeting
- Provides each commissioner ~~a final decision~~ copy of incoming correspondence address to the Ethics Commission
- Provides each commissioner a copy of correspondence sent by the Ethics Commission
- Drafts correspondence for the Chair

- At direction of the Commission, provides ethics training to officials and employees
- Prepares annual certification from County Solicitor certifying to State that County is in compliance with Ethics Law
- Coordinates employee Financial Disclosure Statements with Human Resources, County Administration, and/or the County Council upon hiring and termination
- At the direction of the Commission, reviews Financial Disclosure Statements and lobbying registrations and reports for compliance
- Maintains records on behalf of the Commission in compliance with records retention policy
- Reviews and recommends to the Commission Rules of Procedure updates.
- Notifies the Commission of any amendment to the state Open Meetings and Freedom of Information laws and the State Ethics laws.
- Prepares and maintains a log of all ethics inquiries and reports to the Commission annually