

Proposed Changes to Code of Ethics - Proposed Change #3 – Confidential Complaints
BR11-0744

Summary: This change would allow the board of ethics to wait until after screening a complaint before notifying the person who is the subject of the complaint, and would allow the board to refuse a complaint and return it to the complainant.

Sec. 2-56. Procedures for complaints or inquiries.

The board of ethics shall adopt written rules for complaints or inquiries that create a process that is fair both to the person who submitted the complaint or inquiry and the person who is the subject of the complaint or inquiry. In addition to rules which the board may in its discretion adopt, the rules shall:

- (1) Establish time lines for all aspects of its handling of complaints or inquiries. The time lines shall be sufficiently long to enable a person who is the subject of a complaint or inquiry to have adequate time to understand the complaint or inquiry and prepare a response. The rules shall allow the board to alter the time lines upon a request of the subject of a complaint or inquiry for more time to prepare;
- (2) Require the complaint or inquiry to be in writing on a form approved by the board, to be signed, and to show the home or business address and telephone number of the person who submitted it. The form shall contain a statement that must be signed and which states that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint or inquiry is true. The rules shall require the complaint or inquiry to describe the facts that constitute the violation of this code of ethics in sufficient detail so that the board and the person who is the subject of the complaint or inquiry can reasonably be expected to understand the nature of any offense that is being alleged;
- (3) Prohibit the board from accepting complaints or inquiries about actions that took place more than two years prior to the date of filing;
- (4) Require the board to notify the person who is the subject of the complaint or inquiry that a complaint or inquiry has been filed. The rules shall require the board to provide the notification in a timely manner, but no more than five (5) days from the day the complaint or inquiry was filed, provided that they shall require the board to notify the person who is the subject of the complaint or inquiry immediately if he or she so requests. The rules shall require the notification to include a copy of the full complaint or inquiry; a copy of any portion of this article that is alleged to have been or that may be violated; and the board's rules for dealing with complaints or inquiries. Notwithstanding the above, the rules may allow the board to provide the notification only after the screening process in (6) below has been completed, and the rules may further allow the board to refuse the complaint or inquiry after screening and to return it to the

complainant without providing any notification or public release.

- (5) Require the board to provide the subject of the complaint or inquiry with a copy of the complaint or inquiry before it provides copies to any other parties. The rules shall recognize that distribution to the public of a complaint or inquiry prior to screening by the board as required in (6) below could harm the reputation of an innocent person and is contrary to the public interest; therefore, the rules shall prohibit the public release of the complaint or inquiry until the screening process in (6) below has been completed.
- (6) Require the board or a committee of the board to consult in confidence within thirty-one (31) days of receiving a complaint or inquiry to screen the complaint or inquiry. The rules shall allow the board to immediately dismiss a complaint or inquiry if:
 - a. It has no jurisdiction;
 - b. The alleged violation, if true, would not constitute a violation of this article;
 - c. The alleged violation is a minor or de minimis violation;
 - d. The complaint or inquiry is, on its face, frivolous, groundless, or brought for purposes of harassment;
 - e. The matter has become moot because the person who is the subject of the complaint or inquiry is no longer an officer, official, or employee;
 - f. The person who is the subject of the complaint or inquiry had obtained a waiver or an advisory opinion under section 2-54 permitting the conduct; or
 - g. The appointing authority has already taken action as a result of finding a violation and the board believes the action was appropriate.

The rules shall require the dismissal and the reason for dismissal to be in writing and available to the public.

- (7) Allow the board, at its discretion, to make a finding solely on the basis of written arguments without holding a public hearing, if it determines that there is no significant discrepancy in the facts as presented by the person filing the complaint or inquiry and the person who is the subject of the complaint or inquiry; and the board determines that it doesn't need any additional information. However, the person charged retains the right to request a hearing, which shall be open to the public.

- (8) Require the board to have hearings at meetings, which are open to the public on complaints or inquiries, which have not been dismissed pursuant to paragraph (6) of section 2-56 or resolved under paragraph (7) of this section.
- (9) Allow any person who is the subject of a complaint or inquiry to designate a representative if he or she wishes to be represented by someone else, to present evidence, and to cross-examine witnesses. The rules shall allow the person who submitted the complaint or inquiry and the subject of the complaint or inquiry sufficient time to examine and respond to any evidence not presented to them in advance of the hearing;
- (10) Require deliberations on complaints or inquiries to be conducted in closed session;
- (11) Allow the board to dismiss a complaint or inquiry without a finding for or against the subject of the complaint or inquiry if the person committed the violation due to oversight and comes into voluntary compliance;
- (12) Allow the board to dismiss a complaint or inquiry if the person who submitted it does not appear at hearing and if, in the opinion of the board, it would be unfair to the subject of the complaint or inquiry not to have the opportunity to examine the person. The rules shall, however, require the board to schedule the hearing at a time that is reasonably convenient to both the person who submitted the complaint or inquiry and the subject of the complaint or inquiry;
- (13) Require the board to base a finding of a violation upon clear and convincing evidence;
- (14) Require the board to inform the person who submitted the complaint or inquiry and the subject of the complaint or inquiry in writing if it believes a complaint or inquiry is frivolous, groundless, or brought for purposes of harassment;
- (15) Prohibit members who have not been present for the hearing from participating in a recommendation;
- (16) Require that findings and recommendations be made only by a majority of the board;
- (17) Allow the board to consider, when it makes findings and recommendations, the severity of offense; the presence or absence of any intention to conceal, deceive, or mislead; whether the violation was deliberate, negligent, or inadvertent; and whether the incident was isolated or part of a pattern;
- (18) Allow the board to issue an advisory opinion in response to a complaint or inquiry, in lieu of making findings and recommendations, where deemed appropriate by the board.

