

**Rules & Regulations
Of the
Board Of Ethics
&
Campaign Practices**



**For The
Code of Ethics
Of the
City Charter**

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RULES AND REGULATIONS OF THE BOARD OF ETHICS AND CAMPAIGN PRACTICES RELATING TO THE CODE OF ETHICS OF THE CITY CHARTER

Section 1 Pursuant to the authority granted by the City Charter of the City of Albuquerque, the Board of Ethics and Campaign Practices (hereinafter referred to as the "Board") issues the following Rules and Regulations for its conduct, and for interpretation and enforcement of the Code of Ethics (Article XII) of the City Charter.

In the event that these Rules and Regulations are in conflict with the provisions of the Code of Ethics of the City Charter, the provisions of the Code of Ethics shall prevail.

Terms and words, which are used but not defined in these Rules and Regulations, shall have the same meaning as defined or used in the Code of Ethics.

Section 2 WHERE TO FILE AND ADDRESS INQUIRES

A Questions to the Board concerning the Code of Ethics or these Rules and Regulations are to be directed to the Office of the City Clerk.

B All declarations, statements, disclosure statements, forms, and any other documents required by the Code of Ethics or these Rules and Regulations to be filed with or submitted to the Board shall be filed in the Office of the City Clerk in accordance with the times specified in the Code of Ethics, these Rules and Regulations or as specified by the Board. The first disclosure statement under City Charter Article XII, Section 5 (c) shall be due February 15, 2002 and shall be filed on reporting forms approved by the Board. The disclosure statement may be signed by a representative of the Mayor or Councillor filing the statements, provided that the Mayor or Councillor has designated such representative on a form approved by the City Clerk.

C It is the responsibility of the person filing or submitting such documents to request and receive from the Office of the City Clerk a signed receipt showing the date and time of filing or submission.

D All documents required by the Code of Ethics or these Rules and Regulations to be filed with or submitted to the Board shall be complete in all respects. Documents submitted will be considered incomplete unless all of the enumerated information is provided. Incomplete submissions will not be considered to be timely filed unless the information is provided on a corrected submission filed prior to the times specified in the Code of Ethics or these Rules and Regulations.

Section 3 ADVISORY OPINIONS

A The Board shall issue advisory opinions to any Official pursuant to the following procedures. For purposes of these rules and regulations, "Official" shall have the same definition found in City Charter Article XII, Section 2.

1 The Subcommittee. A subcommittee of the Board shall review advisory opinion requests from Officials. The subcommittee shall consist of the Chair and Vice Chair of the Board and a third member of the Board who shall be designated by the Chair on an ad hoc basis. The Subcommittee shall make recommendations to the entire Board on each opinion request.

2 The Official shall file a request for advisory opinion with the City Clerk on a form approved by the City Clerk.

3 The subcommittee may require the Official requesting an opinion to provide additional information and to appear before the subcommittee to respond to questions related to the request.

4 The Board shall review all recommendations from the subcommittee. The Official requesting an opinion may attend such review hearing. The Board may require the Official requesting an opinion to answer questions or provide additional information or documentation at the review hearing. The Board may modify the recommended advisory opinion submitted by the subcommittee.

5 Each advisory opinion shall be issued only after a majority of the entire membership of the Board has voted in favor of the advisory opinion.

B Confidentiality, Public Hearings and Public Record

1 The request for an advisory opinion shall remain confidential and shall not be a public record until the request and recommendations of the subcommittee are heard by the Board.

2 The meetings of the subcommittee shall not be open to the public. The review hearing on advisory opinions by the Board shall be an open meeting.

3 All advisory opinions approved by the Board shall be filed with the City Clerk and shall be a public record. The City Clerk shall index the advisory opinions by subject matter and date.

C Advisory Opinion Requirements

1 The Official shall file a request for advisory opinion with the City Clerk on a form approved by the City Clerk.

2 The request for an opinion shall be about the conduct of the Official making the request, not that of some other person.

3 The request shall be only about prospective conduct, not past or present actions.

4 The request must be about a real or potential conflict the requesting Official is facing.

5 All material facts must be revealed in the request.

6 The Official who is issued an advisory opinion is the only one who may use the opinion as a defense.

7 The Board may include in the advisory opinion that the Official must take particular actions or refrain from certain conduct in order to be eligible to use the advisory opinion as a defense to any future complaint.

D Advisory Opinions as a Defense

1 An Official who receives an advisory opinion may rely on the opinion under the following conditions. If a complaint is filed against that Official based on the same facts that are the basis for the opinion request, the Official may raise the advisory opinion as a defense in his response to the complaint or any portion of the complaint. The Board shall determine if the opinion was followed and whether the complaint is based on the same facts revealed in the opinion request. If both are found, the Board shall dismiss the complaint or that portion of the complaint that pertains to the advisory opinion.

2 In the event the Board finds that material facts were omitted by the Official in requesting the advisory opinion, that the Official did not follow the advisory opinion, or that the complaint involves material facts other than those that are the basis of the advisory opinion, the Board shall not dismiss the complaint solely on the basis of the advisory opinion, however the Official may use the advisory opinion as part of his defense.

3 Advisory opinions may be used by both Complainants and Respondents as precedence, but such opinions are not binding on the Board unless it is an opinion found by the Board to have issued to and followed by the Respondent pursuant to paragraph D 1 of this section.

Section 4 ENFORCEMENT

A Complaints and Violations

1 A complaint alleging any violation of the Code of Ethics shall be made in writing by the filing of a notarized statement attesting to the truth of its contents on a form approved by the City Clerk. The complaint shall include documentation as to time, place, facts, and the names of any witnesses to the alleged violations. Complaints and answers to complaints shall be verified. The Board shall not hear a complaint that is not verified. A Respondent's failure to timely file a verified answer may be construed by the Board, depending on the totality of the circumstance, as an admission of allegations. A sample form of verification is available at the Office of the City Clerk.

2 The complaint shall specify the provision or provisions of the Code of Ethics or these Rules and Regulations alleged to have been violated and provide a clear and concise statement of what events took place that the Complainant believes violated the provision or provisions of the Code of Ethics or these Rules and Regulations that are cited in the complaint. No complaint will be accepted for filing unless it is signed and notarized and unless the documentation referred to above and the statement of the provision alleged to have been violated or reason for the complaint is presented at the same time the complaint is offered for filing. Complaints may be accompanied by verified affidavits pertaining to material elements of the complaint.

3 **Limitations** The Board will not set for hearing any complaint charging a violation alleged to have occurred more than one hundred twenty (120) days prior to the date the complaint is filed unless the facts and documentation supporting the charges alleged in the complaint were not public knowledge or available for public inspection within that time frame. But in no event shall the Board hear a complaint alleging violations in which the alleged violation occurred more than one year in the past unless the Complainant also alleges fraud or purposeful misrepresentation on the part of the Respondent to conceal the conduct that is the subject of the complaint.

4 All complaints shall be filed with the Office of the City Clerk, who in turn will immediately deliver a copy of the complaint to each member of the Board and each Respondent. After reviewing the complaint at a preliminary hearing the Board shall either accept the complaint for hearing or reject the complaint and notify the Complainant in writing of the rejection and the reasons therefore and the Complainant's right to appeal the rejection.

B Summary Dismissals

Upon receipt of a Complaint by the City Clerk, the Clerk shall send a copy of the Complaint with all attachments to each member of the Board along with the names of the Board members who will be on the review committee, established hereafter. Any Board member who requests that the Complaint be considered at a preliminary hearing shall so notify the Clerk within ten days of that Board member's receipt of the Complaint. If the Clerk receives such notice, the Clerk shall schedule a preliminary hearing and the summary procedure provided hereafter shall not apply to the Complaint. When no Board

member requests that the Complaint be heard at a preliminary hearing, complaints filed pursuant to these Regulations shall be reviewed by a Review Committee that shall consist of the Chair and two other Board members designated by the Chair to determine whether the complaint states a violation of the Code of Ethics. Designation of the two board members shall be by alphabetical rotation by last name of the Board members. If a Board member is not available, the Chair may designate the next Board member on the alphabetical list. If the three Board members agree that no violation of the Code of Ethics is stated in the Complaint, the Complaint shall be dismissed without a preliminary hearing. The three board members shall not be required to meet to make their decision. The City Clerk shall compile the decisions of the three Board members and when all three agree on dismissal, the Clerk shall prepare an order of dismissal, which only the Chair shall be required to sign. The Complainant shall be entitled to appeal the decision by filing a notice of appeal with the City Clerk within ten calendar days after Complainant's receipt of the notice of dismissal. Upon receipt of a notice of appeal filed within the required time, the City Clerk shall schedule a preliminary hearing. The Respondent shall be given notice of all actions taken pursuant to this section. The City Clerk shall provide all Board members a copy of the Complaint and the order of dismissal at the time of dismissal.

C Response For Preliminary Hearing

Respondents may file a statement with the Board explaining why the complaint fails to state a violation of the Code of Ethics. Respondents shall be given twenty (20) calendar days notice of the preliminary hearing. The Respondent's statement shall be filed with the City Clerk ten (10) calendar days prior to the preliminary hearing. The City Clerk shall provide the Complainants and Board members with the Respondent's statement three (3) City working days prior to the preliminary hearing.

D Preliminary Hearing

1 A preliminary hearing shall be held by the Board for the purpose of deciding whether to accept a complaint. The Board's decision shall be based on findings that the factual statements made in the complaint, taken as being true, establish that Respondent has violated the provision or provisions of the Code of Ethics or these Rules and Regulations that are cited in the complaint.

2 Complainants and Respondents and their representatives shall, at the Board's request, address the Board at the preliminary hearing. Such presentations shall be limited to discussion of whether the complaint contains sufficient factual allegations to support a finding that a violation of the Code of Ethics occurred. No testimony shall be accepted and no argument about the accuracy of the facts alleged in the complaint shall be accepted at this hearing. The Board shall also consider the complaint, Respondent's response to the complaint made pursuant to section 4 B of these rules and regulations and any other documentation provided at the request of the Board.

3 **Reasons for Dismissing a Complaint** At the preliminary hearing, the Board may dismiss a complaint if any one of the following is found or for such other reason as may be determined by the Board.

a The Board has no jurisdiction over the subject matter specified in the complaint or over the Respondent.

b The time in which a complaint could be filed has run.

c The conduct alleged in the complaint, if true, would not constitute a violation of the Code of Ethics.

d The complaint on its face is frivolous, groundless, or brought for the purpose of harassment.

e The subject of the complaint has become moot.

f The Respondent had obtained an advisory opinion concerning the identical facts alleged in the complaint and Respondent complied with the advisory opinion.

4 **Appeal** A Complainant who is aggrieved by the Board's rejection of the Complainant's complaint may file an appeal to the District Court. Such appeal shall be filed within five days of Complainant's receipt of the final order of the Board.

5 The Board shall promptly set hearing dates for complaints not rejected.

6 Persons required to testify before the Board shall be served with a subpoena issued by the City Clerk's office and signed by the Chairman of the Board or his designee. Complainants and Respondents shall request issuance of subpoenas through the City Clerk's office in a timely manner.

E Consent Order/Settlement Process

1 At any time after the filing of the complaint, the Respondent may offer to settle the complaint by admitting to the allegations in the complaint and requesting a settlement conference with the staff of the Board. Based on the settlement conference, the staff shall prepare a proposed settlement agreement that shall be submitted to the Board. The settlement agreement shall state the sections of the Code of Ethics and/or these Rules and Regulations violated, the action taken or to be taken by the Respondent to correct the violation and proposed sanctions, if any, upon Respondent.

2 Upon receipt of a proposed settlement agreement, the Board shall meet to determine if it will accept the settlement agreement. Board acceptance of a settlement

agreement shall be by a majority vote of those Board members in attendance. Upon acceptance, the Board shall issue a consent order that shall be provided to all parties. The review of the settlement agreement and vote on the consent order shall be conducted at a public hearing. Testimony shall not be allowed at such hearing nor shall argument of the parties be accepted. The Respondent shall attend the hearing to confirm his acceptance of remedial measures, if any, to be taken by Respondent and sanctions imposed. The consent order shall be a final order concluding the case. The settlement agreement approved by the Board and the consent order shall be public records. In the event a settlement agreement is rejected by the Board, such settlement agreement may not be used as evidence in any subsequent hearings.

F Investigations For the purposes of these Rules and Regulations, the term "allegations" means any formal charges filed with the Board and any other information raising a substantial question related to compliance with the Code of Ethics which least [~~six~~] [four] or more members of the Board vote to investigate.

1 Investigation of Allegations

a Formal Charges

(1) Formal charges are those charges or complaints brought before the Board pursuant to Section 7, Article XII, City Charter and filed in accordance with these Rules and Regulations. Formal charges also include those charges brought by the Board on its own initiative.

(2) By an affirmative vote of at least four members of the Board, the Board may determine to have an investigation of any formal charge prior to or during any hearing that the Board may hold relative to the formal charge.

(3) Decision on any such charges that the Board votes to investigate shall be held in abeyance pending investigation.

b Other information

(1) Any member of the Board may request that the Board authorize an investigation of any information regarding compliance with the Code of Ethics coming to the attention of such member other than as a formal charge.

(2) Such an investigation shall be authorized only upon an affirmative vote of at least four members of the Board.

c Scope of Investigation The scope of any investigation of allegations authorized by the Board shall be specifically defined by the Board prior to the investigation being undertaken.

2 Selection and Retention of Investigators

a If the Board determines, by an affirmative vote of at least four members of the Board, to investigate allegations concerning compliance with the Code of Ethics, the Board may utilize the Office of Internal Audit and Investigations+, City staff assigned to the Board or temporarily employ or contract with investigators. In selecting and retaining investigators to investigate such allegations, the Board is not bound by the procurement procedures of the City of Albuquerque, however, any such selection and retention shall be accomplished in accordance with the procedures in these Rules and Regulations. Investigation assignments to the Office of Internal Audit and Investigations and City staff assigned to the Board requires no procurement procedure and may be accomplished by a vote of at least four members of the Board.

b If the Board has determined, by an affirmative vote of at least four members of the Board, to investigate allegations concerning compliance with the Code of Ethics by using a private entity or individual, the Board shall select an investigator in accordance with the following procedure:

(1) If sufficient time is available, the Board shall seek written proposals by issuing a request for proposals. The request for proposals shall specify the services required, all terms and conditions applicable to providing the services, all evaluation factors, and instructions and information to proposers relative to the preparation and submission of proposals.

(2) If the Board determines that sufficient time is not available to issue a request for written proposals, the selection of an investigator shall be accomplished through such competition as is practicable under the circumstances.

(3) The selection of an investigator shall be determined by majority vote of those Board members in attendance.

(4) The selection of an investigator shall be documented, and any agreement with an investigator shall be reduced to writing and signed by the investigator and the Chairperson of the Board, attested by the City Clerk, and filed in the office of the City Clerk. An investigator selected by the Board shall be retained by the Board for whatever length of time the Board determines is necessary for the investigation of the allegations.

G Answers Answers shall include a response to each allegation in the Complaint and shall be filed with the City Clerk by all Respondents within fifteen days after the Respondent receives notice from the City Clerk that the Board has accepted the complaint at a preliminary hearing. Each Respondent shall send a copy of his/her answer to each Complainant by first class mail and file a certificate of mailing with the City Clerk

certifying that such mailing occurred on or before the date the answer was filed with the City Clerk.

H Hearings In conducting hearings, all parties shall be afforded an opportunity for a full and fair hearing. In this regard, the Board shall follow these procedures:

1 Parties The party filing a complaint with the Board shall be referred to herein as the "Complainant" and the party responding to alleged violations of the Code of Ethics or these Rules and Regulations shall be referred to herein as the "Respondent."

2 Notice

a The Board shall give at least fourteen (14) days written notice of the hearing to each party stating the time and place of the hearing.

b The notice of hearing shall contain a brief description of the matter to be heard so that all participants have an opportunity to prepare for the hearing.

c The Board shall require that the parties provide in advance a written statement of all issues to be addressed, a list of proposed witnesses, a brief statement of the nature of each witness's testimony, and copies of all documentary evidence to be introduced at least ten (10) days prior to the scheduled hearing. One copy of each item required pursuant to this paragraph shall be provided to the City Clerk to the attention of the Board, and one copy to each opposing party. Failure of a Complainant to comply fully with this paragraph shall result in a dismissal of the complaint with or without prejudice at the Board's discretion in view of a totality of the circumstances. Failure of a Respondent to comply fully with this paragraph may result, based on a totality of the circumstances, in an admission of all alleged charges in the complaint. Parties objecting to authenticity of proposed exhibits must make an objection in writing to the Office of the City Clerk at least three (3) days prior to the scheduled hearing and shall provide a copy of the objection to opposing parties simultaneously. A party's failure to make a timely objection to the authenticity of opposing party's exhibits shall result in the admission of those exhibits.

3 Continuances Requests for continuances shall be made, in writing, at least seven (7) days prior to the hearing, and shall be delivered to the Office of the City Clerk to the attention of the Board.

4 Evidence

a The Board shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant,

immaterial and unduly repetitious evidence shall be excluded. It is the policy of the Board that testimony and information presented during the hearing must have a direct and substantial bearing on the case at hand.

b Hearsay testimony shall be admissible subject to the other limitations on admissibility contained in these rules, provided that anonymous statements shall not be admissible.

c The Board shall base its decision on evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Each violation of the Code of Ethics or these Rules and Regulations found by the Board shall be supported by at least some evidence that is admissible in a court of law.

5 Hearing Procedure

a The Chairperson of the Board shall act as the presiding officer at the hearing unless he/she is unavailable or wishes to delegate this duty, in which case the Board members shall select a presiding officer. The presiding officer shall

(1) Determine the admissibility of evidence and testimony;

(2) Make rulings on procedural issues; and

(3) Be responsible for the Board's written ruling in each case.

(4) Issue an administration subpoena for the appearance of a person at a hearing or for the production of documents, or both. When the Board has authorized an investigation, pertinent documents may be required to be produced to the investigator at other than a Board meeting.

(5) Request the City Attorney to apply for a Court order compelling compliance with an administrative subpoena or for a Court order requiring the giving of the testimony or production of documents.

(6) The presiding officer may impose reasonable limits on the number of witnesses to be heard and on the nature and length of the testimony or examination of persons appearing at such hearings.

(7) The presiding officer may set time limits for presentation of opening and closing statements.

(8) The presiding officer may prohibit repetitive testimony.

b Should an action of the presiding officer challenged by another Board member, and should the presiding officer disagree with the challenge, the issue will be decided by a majority vote of the Board members present.

c The Board may, but is not required to recognize any agreements on facts and issues between the parties and eliminate certain facts not in dispute in defining the issues to be heard.

d Prior decisions by the Board on the same issue will generally be followed and the parties are urged to refer to prior rulings on identical or similar issues. Prior decisions are available at the City Clerk's Office. The City Clerk shall index all Board case decisions by subject and date.

e The Board may request clarification by the Complainant of a complaint prior to any hearing, request that certain facts be examined initially in order to determine whether such facts exist as will support the allegations to be heard, or make any other rulings that are procedural, limiting, dispositive, or otherwise, which are in accordance with the law as applied to the facts at issue.

f Any party may be represented by representatives.

g The Board may dismiss a complaint after hearing evidence if it finds that the Respondent committed the violation due to an oversight, Respondent has come into compliance voluntarily and the Board determines that no sanction is required or when the Complainant does not appear at a hearing, but only if the Board determines that it would be unfair to the Respondent not to have the opportunity to examine the Complainant.

h In the absence of the Board's decision to proceed in a different manner, notice of which shall be given to the parties at least three (3) days in advance of the hearing, the sequence of the hearing shall be as follows:

(1) Opening Statement of Issues The Complainant and then the Respondent will present statements of issues involved in the case and outline the case that will be presented.

(2) Complainant's Presentation of Its Case The Complainant's case will first be presented to the Board. Witnesses for the Complainant will be called, sworn, and questioned on their involvement in or knowledge of the case. Following each witness's testimony, the Respondent will have the opportunity to question the witness. Board members will then have the opportunity to question the witness on matters related to his/her testimony. Follow-up questioning by the Complainant will be allowed at the discretion of the presiding officer. This procedure will be followed for each of the Complainant's respective witnesses.

(3) **Presentation of Respondent's Case** Respondent's presentation shall follow Complainant's and the same format as the presentation of Complainant's case shall apply.

(4) **Rebuttal Testimony** Following presentation of the Respondent's position, the Complainant will be allowed to present rebuttal testimony at the discretion of the presiding officer. Such testimony shall be brief and specifically address the issues brought forth in the Respondent's presentation. No new issues shall be raised.

(5) **Closing Statements** At the conclusion of the case presentations and rebuttal testimony, the Complainant and Respondent will each make his/her closing statements. The closing statements should briefly review the issues presented and the desired outcome. The Complainant will then have the opportunity to make a final statement, which shall be limited to issues brought forth in the Respondent's closing statement.

(6) **Decision** Any decision or opinion of the Board, including findings of fact, which shall consist of a written statement of the facts relied on to support the decision of the Board, shall be given to each party by certified mail or personal service, and shall be filed in the Office of the City Clerk.

(7) **Record** The following records of the Board's proceedings shall be kept:

(a) A full record of the hearing by sound recording (which shall be retained for one year after the final decision is issued);

(b) All documents of other items considered and received as evidence; and

(c) Any decision or opinion of the Board.

I Fines

1 Pursuant to the Code of Ethics, the Board may, after due hearing, issue a public reprimand or impose a fine not to exceed \$500 for each violation of the Code of Ethics or do both.

2 All fines shall promptly be paid to the City of Albuquerque by depositing the amount of any such fine in the Office of the City Clerk.

3 In addition to imposing such sanctions or as an alternative thereto, the Board may recommend to the City Council that the violator be suspended or removed from

office.

J Communications After a complaint has been filed, none of the parties or their representatives may communicate on an ex parte basis with the Board or any Board member on any matter pertaining to the complaint. All communications pertaining to the complaint shall be sent to the office of the City Clerk.

K Board Initiated Charges Notwithstanding any other provision in these Rules and Regulations, the Board may, on its own initiative, initiate a charge or charges that an Official has committed a violation of the Code of Ethics or of these Rules and Regulations.

Section 5 MISCELLANEOUS

A Notice Any notice required by the Code of Ethics or these Rules and Regulations shall be given by certified mail or personal service.

B Meetings The Board shall comply with the provisions of the New Mexico Open Meetings Act relating to notice to the public of its meetings and meetings being open to the public. The length of notice given to the public of the Board's meetings shall be determined by annual resolution. Deliberations on cases, including the drafting of findings and conclusions, may be in closed or open sessions.

C Records All records of the Board in the conduct of its business, including but not limited to minutes of meetings and recommendations to the City Council and Mayor, shall be under the custody of the Office of the City Clerk, and shall be preserved intact as permanent public records, provided that video and audio records need be retained for only one year.

D Amendments The Board, by majority vote, may amend these Rules and Regulations pursuant and subject to the authority granted under Section 10 of the Code of Ethics.

E Effective Date and Filing These Rules and Regulations, having been approved by the Board of Ethics and Campaign Practices on May 30, 2007 by a vote of five for, none against and two absent, shall be effective on the date entered below and shall be filed in the Office of the City Clerk.

ADOPTED THIS 30th DAY OF MAY 2007.



Robert P. Tinfin, Jr.
Chairman, Board of Ethics and Campaign Practices



Millie Santillanes, City Clerk