

ETHICS COMMISSION
CITY OF JACKSONVILLE



RULES & PROCEDURES

Adopted November 5, 2012

Amended May 6, 2013

REVIEW, INVESTIGATION, AND HEARING OF COMPLAINTS

Table of Contents

Rule 1 - Scope, Jurisdiction, Definitions and Applicability5

 Enabling Law5

 Jurisdiction5

 Definitions.....5

Rule 2 - Time Periods and Statute of Limitations.....7

Rule 3 - Filing and Serving Documents; Facsimile Transmissions7

Rule 4 - Presiding Officer7

Rule 5 - Procedures Upon Receipt of a Sworn Complaint of Violation of Ethics Laws.....7

 Safeguarding Confidential Materials7

 Technical and Clerical Review of a Sworn Complaint.....8

 Ethics Director Assistance8

 Transmittal of Sworn Complaint to Respondent8

 Complaints Within 15 Days of Election Returned8

 Probable Cause Determination9

Rule 6 - Review for Sufficiency of Allegations of Violations of Ethics Laws and Order of

Preliminary Investigation for Complaints.....9

 Review for Legal Sufficiency9

 Preliminary Investigation.....9

 Executive Sessions.....9

 Personnel Actions10

Rule 7 - Withdrawal of Complaints10

Rule 8 - Self-Initiation of Complaints by Commission10

 Executive Session10

 Executive Session of the Hotline Sub-Committee.....11

 Assistance to Hotline Sub-Committee11

 Notice of Hotline Sub-Committee Recommendation to Respondent.....11

 Transmittal of Complaint to Executive Session of Commission11

Respondent’s Right to Attend Executive Session of Commission	11
Transmittal of Complaint to Respondent	12
Probable Cause Determination	12
Rule 9 - Initiation of Investigation Based on Hotline Tips or Other Ethics Complaints.....	12
Receipt and Review of Hotline Tips.....	12
Presentation to Hotline Sub-Committee	12
Hotline Tip or Other Complaint Procedure	12
Rule 10 - Investigations	13
Investigations	13
Scope of Investigations	13
Evidence of Wrongful Acts Unrelated to the Complaint.....	13
Investigator Contacts with Potential Witnesses	13
Investigator to be Impartial.....	13
Investigator’s Report.....	14
Investigatory File	14
Rule 11 - Commission Vote on Probable Cause.....	14
Commission to Vote	14
Probable Cause Determination	14
Finding of Probable Cause.....	16
Rule 12 - Public Hearing Procedures	16
Respondent.....	16
Advocate	16
Complainant.....	17
Motions to Dismiss for Lack of Jurisdiction.....	17
Notification of Manner of Disposition.....	17
Parties to Public Hearings.....	17
Public Hearing Procedures	17
Presentation of the Case.....	17
Opening and Closing Statement.....	18
Evidence.....	18
Recording of the Proceedings	18

Scheduling Order	18
Transmittal of Public Report	18
Rule 13 - Confidentiality	19
Proceedings Confidential	19
Communication to Respondent.....	19
Rule 14 - Disqualifications of Commission Members	19
Disqualification In-general	19
Time Limitation	19
Disqualification on Legally Sufficient Motion and Affidavit.....	20
Automatic Disqualification	20
Rule 15 - Ex Parte Communications	20
Ex Parte Communications Disfavored.....	20
Ex Parte Disclosure.....	20
Procedure on Receipt of an Ex Parte Communication.....	20
Rule 16 - Formal Actions	21
Rule 17 - Dismissal of Violation; Resolution	21

Rule 1 – Scope, Jurisdiction, Definitions and Applicability.

- a) **Enabling Law.** These rules, pursuant to Section 602.931 of the Jacksonville Ethics Code, shall govern the receipt and disposition of all Complaints to the Ethics Commission concerning violations of Ethics Laws under Chapter 602 of the Jacksonville Ethics Code. These rules shall become effective as of the date of adoption by the Ethics Commission. On the effective date of these rules they shall govern disposition of all Ethics Complaints concerning violations of Ethics Laws heretofore received by the Commission and all Complaints concerning violations of Ethics Laws received after the Effective Date.

- b) **Jurisdiction.** The Ethics Commission shall have jurisdiction to receive, investigate and issue findings with regard to any sworn written complaint alleging a violation of Chapter 602, Ethics Code. The Ethics Commission may also self-initiate a complaint of Chapter 602 with a minimum vote of six members of the Commission. (Section 602.921(a))

- c) **Definitions.** Definitions are defined in the Ethics Code, Section 602.201, and in these Rules as follows:

Advocate means the individual presenting the case before the Ethics Commission. The Advocate may be any individual as set forth in Rule 12 of these Procedures, and shall be appointed by the Chair of the Commission.

Clear and Convincing Evidence means evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue.

Code means the Chapter 602 of the City of Jacksonville Code of Ordinances.

Complainant means the individual who brings a Complaint forward for the Commission’s review

Confidentiality means the authority, pursuant to Florida Statute 112.324 and Jacksonville City Code section 602.921(a) to hear pending ethics complaints in Executive Session and to hold documents relating to Ethics Complaints in a confidential manner, so they are not subject to public records laws until authorized by statute, in accordance with Rule 13.

Council Auditor means the City of Jacksonville Council Auditor's Office, including the Council Auditor and members of the Council Auditor's staff.

Ethics Complaint or Complaint means an alleged violation of the Ethics Law which has been brought to the attention of the Director of the Office of Ethics, Compliance and Oversight or the Ethics Commission. In accordance with the Ethics Law, an Ethics Complaint may initially be received by any source (email/phone-call/hotline) but in order to be processed as an official complaint, must be a Sworn Complaint alleging a violation of Chapter 602, or a Self-Initiated Complaint by the Ethics Commission. (Section 602.921(a)). For the purposes of these procedures, the term Ethics Complaint shall apply to these types of Ethics Complaints.

Ethics Laws means Chapter 602 of the City of Jacksonville Code of Ordinances.

Ethics Director means the person identified in Chapter 602, Part 6 as the Director of the Office of Ethics, Compliance and Oversight.

Executive Session means those meetings which are authorized by and conducted in accordance with Florida Statute 112.324 (shade meetings); these meetings shall be recorded, pursuant to Section 602.931(c).

Ex Parte Communications means communications made to a decision-making official off the record and out of the presence of other parties, as set forth in Rule 15.

Hotline tip means any information related to an alleged violation of the Ethics Laws.

Investigator means the Ethics Director, the Council Auditor, the Office of General Counsel liaison, one or more members of the Commission or any other appropriate person or municipal agency who is authorized by these Rules or the Code to conduct an investigation into a Complaint.

Legal Sufficiency refers to Complaints that are deemed legally sufficient if the Complainant sufficiently alleges facts which, if true, would constitute a violation of Ethics Laws.

Probable Cause means that the facts and circumstances are sufficiently strong to support a reasonable belief that the Respondent had committed violation of the Ethics Laws.

Respondent means the individual who is the subject of the Complaint

Self-Initiated Complaint means an Ethics Complaint instituted by the Ethics Commission in accordance with Section 602.921, and Rule 8 set forth herein.

Sworn Complaint means an Ethics Complaint initiated by the receipt of a Complaint which is signed by a Complainant under oath, in accordance with Rule 5(b).

- d) **Amendment to Rules.** These rules may be amended at any regular meeting by a majority vote of the Commission, provided that the amendment has been submitted in writing at the previous regular meeting, or submitted to the Ethics Director and Office of General Counsel Ethics Counsel, at least 10 days prior to the next scheduled Ethics Commission meeting. Any such amendment(s) shall take effect on a subsequent date, taking into account pertinent factors such as pending cases.

Rule 2 – Time Periods and Statute of Limitations.

In computing any period of time prescribed or allowed by these rules the time period shall be calculated using City of Jacksonville business days only, unless otherwise specified in the Rule. No action may be taken on a complaint filed more than two (2) years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation. (Section 602.939).

Rule 3 – Filing and Serving Documents; Facsimile Transmissions.

Documents under these rules shall be filed with the City of Jacksonville’s Ethics Director or the Office of General Counsel, and served, when service is required, by mail, facsimile, hand delivery, or any combination thereof, except where specifically provided otherwise herein.

Rule 4 – Presiding Officer.

For purposes of Commission proceedings under this Chapter, the presiding officer shall be the Chair of the Commission or, in the event the Chair is unavailable, the Vice Chair of the Commission.

Rule 5 – Procedures Upon Receipt of a Complaint of Violation of Ethics Laws.

- (a) **Safeguarding Confidential Materials.** Upon receipt of a Complaint, the Ethics Director shall print on the face thereof the date on which the Complaint was received in the Ethics Director's office. Each Complaint received shall be assigned a control number which shall be entered on the Complaint itself and on a folder marked confidential in which the Complaint shall be filed so long as it remains Confidential. Any document related to the Complaint shall be entered into the Complaint file.
- (b) **Technical and Clerical Review for a Sworn Complaint.** Upon receipt of a Sworn Complaint, the Ethics Director shall review the complaint to insure that the proper Sworn Complaint form has been used, that all the information required has been provided, that only one Respondent has been named in each Sworn Complaint form submitted, and that the Sworn Complaint has been properly signed by the Complainant under oath. Additionally, the Sworn Complaint shall be reviewed as to the Statute of Limitations. (Section 602.939). One or more persons may sign a Sworn Complaint under oath; however, when the Sworn Complaint is to be filed under oath in a representative capacity on behalf of an incorporated association or group, the Sworn Complaint shall include sufficient information to indicate the authority of the person signing the Sworn Complaint to file such a Sworn Complaint on behalf of the association or group. If the Sworn Complaint lacks any of the foregoing or is otherwise incomplete, a copy of the Sworn Complaint shall be returned to the Complainant identifying the defect.
- (c) **Ethics Director Assistance.** The Ethics Director shall provide assistance or information to persons seeking to file a Complaint, but shall not solicit or discourage the filing of a Complaint. If the Complaint is filed on behalf of an unincorporated group or association, the person(s) signing the Complaint shall be considered to be the Complainant(s) rather than the group or association.
- (d) **Transmittal of Sworn Complaint to Respondent.** Except as provided otherwise herein, a copy of the original Sworn Complaint shall be transmitted to the Respondent by hand delivery or by certified mail, return receipt requested, by the Ethics Director or General Counsel liaison to the Commission within ten (10) days of its receipt. Subsequent sworn amendments to the Sworn Complaint also shall be transmitted to the Respondent within five (5) days of their receipt. The Ethics Director may elect, where appropriate and in consultation with the Chair of the Commission and the Ethics liaison from the Office of General Counsel, to delay service of the Sworn Complaint in any matter where service of the Sworn Complaint on the Respondent would interfere with an investigation by other law enforcement agencies or the State of Florida Commission on Ethics.

- (e) **Complaints Within 15 Days of Election Returned.** Any Complaint against a candidate in a general, special, or primary election that is received within the fifteen calendar days immediately preceding the date of that election, including Saturdays, Sundays, and holidays, will be returned by the Ethics Director to the person filing the Complaint, with an explanation of why the complaint is being returned.
- (f) **Probable Cause Determination.** Complaints that are not otherwise disposed of, shall then proceed to subsequent investigation pursuant to these Rules, and if applicable, consideration by the Commission as a whole to determine whether Probable Cause exists that a violation of the Ethics Laws occurred, in accordance with Rule 11.

Rule 6 – Review for Sufficiency of Allegations of Violations of Ethics Laws and Order of Preliminary Investigation For Complaints.

- (a) **Review for Legal Sufficiency.** After the Complaint has been received, the Complaint shall be reviewed by the Ethics Director in order to determine whether the Commission has jurisdiction over the Complaint; that is, whether the Complaint is one concerning a violation of Ethics Laws (Chapter 602). 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 sufficiently alleges facts which, if true, would constitute a violation of Ethics Laws. A Complaint shall not be insufficient because it is based upon evidence which would be hearsay evidence in a court of law. In order to make this determination, the Ethics Director may request additional information from the Complainant, shall consult with the ethics liaison from the Office of General Counsel, and may obtain information from public records.
- (b) **Preliminary Investigation.** If the Ethics Director finds that the Complaint is sufficient to invoke the jurisdiction of the Commission, the Ethics Director shall, after consultation with Chair of the Commission or in his/her absence, the Vice-Chair, (1) commence a preliminary investigation of the Complaint, or (2) refer it to any other agency whose jurisdiction or purview is appropriate or (3) if applicable (see Rule 8(a)), prepare it for Commission consideration to self-initiate a Complaint. The Chair may schedule an Executive Session of the Commission, as appropriate. In the event of a referral to another agency, under Section 602.938, the Commission shall stay any consideration of the matter until the conclusion of the other agency's actions on the matter, and shall otherwise avoid interfering with any ongoing criminal investigation or prosecution or any investigation or proceeding of the State of Florida Commission on Ethics.

- (c) **Executive Sessions.** If an Executive Session is scheduled pursuant to sub-section (b) of this Rule, or if the Ethics Director finds that the Complaint is not sufficient to invoke the jurisdiction of the Commission, the Complaint shall be brought before the Commission in Executive Session with the recommendations of the Ethics Director. The Commission may find the Complaint to be sufficient and order an investigation; may find the Complaint to be insufficient, dismiss it, and notify the Complainant that no investigation will be made; or may take such other action as may be appropriate. In any case where a Complaint is found legally insufficient and dismissed, a summary of the reasons for dismissing the Complaint together with the Complaint itself and all documents related thereto shall become a public record and constitute a public report.
- (d) **Personnel Actions.** When an Employee of the City or one of its agencies is alleged to have violated the Ethics Laws, and, based on substantially the same set of facts, is subject to an ongoing disciplinary action by the City or one of its agencies, pursuant to Section 602.938, the Commission shall stay consideration of a complaint until the conclusion of the personnel proceeding. Nothing herein shall abridge any rights such an employee may have to collective bargaining or Civil Service Rules.

Rule 7 – Withdrawal of Complaints.

After a Complaint has been determined to be sufficient to invoke the jurisdiction of the Commission, the Commission may permit the Complainant(s) to withdraw the Complaint. Withdrawal shall be requested in writing and shall be signed by the Complainant(s) and witnessed by a notary public, stating the facts and circumstances constituting good cause for dismissal of the Complaint. The Ethics Director shall prepare a written recommendation regarding disposition of the request which shall be given to the Commission together with the request. "Good cause" shall be determined based upon the legal sufficiency or insufficiency of the Complaint to allege a violation of the Ethics Laws, the stage in disposition of the Complaint at the time the request was received, whether the Complaint should proceed in the judgment of the Commission despite the Complainant's wishes, and the reasons given by the Complainant(s) for wishing to withdraw the Complaint. If withdrawal is permitted, the Commission shall order the Complaint dismissed and shall proceed in accordance with Rule 6 as if the Complaint had been found insufficient under that rule. The Commission may also proceed with the complaint on their own initiation, subject to self-initiation rules.

Rule 8 – Self-Initiation of Complaints by the Commission.

The following process shall be followed for the Ethics Commission to self-initiate a Complaint against a city Employee or Official, or any other person subject to the Jacksonville Ethics Code.

(a) **Executive Session.** Pursuant to Section 112.324 of the Florida Statutes, any discussions by a Commission member about initiating an investigation against an Employee or Official shall be initiated in either an Executive Session of the Hotline Sub-Committee or of the Commission as a whole. The Commission member desiring to engage in such discussions shall request, through the Office of Ethics, Compliance and Oversight, that such a meeting be scheduled.

(b) **Executive Session of the Hotline Sub-Committee.** The Hotline Sub-Committee shall handle the initial discussions and investigations of any Complaint matters in an Executive Session. After deliberation(s), the Hotline Sub-Committee shall make a motion and a written recommendation to the entire Commission that: 1) a proposed Complaint is determined to be legally insufficient or, 2) a Complaint is determined to be legally sufficient and that the Commission should commence an investigation as to whether a violation of the Ethics Law has occurred.

(c) **Assistance to the Hotline Sub-Committee.** The initial recommendation of the Hotline Sub-Committee shall be done with the assistance of the Ethics Director and the Commission's Ethics liaison from the Office of General Counsel.

(d) **Notice of Hotline Sub-Committee Recommendation to Respondent.** After the Hotline Sub-Committee's recommendation vote, a copy of such written recommendation containing a statement of the allegation(s) shall be provided to the Respondent at least ten (10) days prior to the meeting of the Executive Session of the Commission when the Commission will consider whether to self-initiate a Complaint or not.

(e) **Transmittal of Complaint to Executive Session of the Commission.** The recommendation of the Hotline Sub-Committee shall be considered by the Commission as a whole, at which time the Commission shall either: (1) vote to self-initiate a Complaint alleging a violation of the Ethics Laws, which such vote shall require a minimum of six (6) members of the Commission voting in the affirmative of such action, or (2) otherwise dispose of a Complaint. In the event a Self-Initiated Complaint is approved by the Commission, a Sworn Complaint form, as is filed by citizens for Sworn Complaints shall be filed and signed by the Chair of the Commission, an Advocate shall be assigned, and further investigation

shall be undertaken. Further proceedings shall be held in accordance with these Rules (including Rule 5, 6 and 11).

(f) **Respondent's Right to Attend Executive Session of the Commission.** The Respondent and/or their counsel shall be permitted to attend the Executive Session of the Commission where consideration as to whether to self-initiate a Complaint will be determined. The Respondent and/or their counsel may, in their discretion, make a written and/or oral statement to the Commission prior to the Commission's vote on whether to self-initiate a Complaint. The Commission may excuse the Respondent and his/her counsel at any time before and after the Respondent has been heard.

(g) **Transmittal of Complaint to Respondent.** Except as provided otherwise herein, a copy of the Sworn Complaint shall be transmitted to the Respondent by hand delivery or by certified mail, return receipt requested, by the Ethics Director or General Counsel's office within ten (10) days of the Commission's Executive Session meeting where the Commission approves commencement of a Self-Initiated Complaint.

(h) **Probable Cause Determination.** Complaints that are not otherwise disposed of, shall then proceed to subsequent investigation pursuant to these Rules, and if applicable, consideration by the Commission as a whole to determine whether Probable Cause exists that a violation of the Ethics Laws occurred, in accordance with Rule 11.

Rule 9 – Initiation of Investigations Based on Hotline Tips or Ethics Complaints

(a) **Receipt and Review of Hotline Tips or Ethics Complaints.** The Ethics Director shall review Hotline tips or Ethics Complaints to determine if the nature of the alleged violation is within the jurisdiction of the Ethics Commission. Hotline tips shall be treated as anonymous unless the Complainant specifically requests to include his or her name. Hotline tips may relate to various issues within the City, and the Ethics Director may coordinate contact with the appropriate City department. The Ethics Director may promulgate additional operational procedures.

(b) **Presentation to Hotline Sub-Committee.** If the Hotline tip or Ethics Complaint falls within the jurisdiction of the Commission, the Hotline tip or Complaint shall be presented to the Hotline Sub-Committee for review, with a recommendation from the Ethics Director. After review and recommendation of the Hotline Subcommittee, Hotline tips may be further investigated and Ethics Complaints

shall be processed in accordance with Rule 6, or if applicable Rule 8. The Hotline Sub-Committee's recommendation may include whether additional investigation or notification is needed, or if the Hotline tip shall be referred to another agency.

- (c) **Hotline Tip or Other Complaint Procedure.** All Hotline tips and/or Complaints received by the Ethics Director that are not a violation of the Ethics Laws shall be disposed of by the Ethics Director accordingly, and at such time filed and retained by the Ethics Director as public records for review by any members of the Commission, and any members of the public. Otherwise, all Hotline tips and/or Ethics Complaints shall be reviewed, considered and determined by the Commission for further investigation, action or disposal as follows: (i) if it's not a violation of Chapter 602, Ordinance Code, it shall be disposed of; (ii) if it's an alleged violation of another jurisdiction's purview, it may be referred to the appropriate agency, if applicable and where appropriate; (iii) if it's a violation Chapter 602, Ordinance Code, it may be further investigated pursuant to Rule 10; or (iv) otherwise dismissed pursuant to Rule 17.

Rule 10 – Investigations

- (a) **Investigations.** Investigations of any matters not referred to an outside agency may be conducted by the Ethics Director, by the Council Auditor, by the Office of General Counsel liaison, by one or more members of the Commission or by any other appropriate person or municipal agency as provided for in the Code. In the event a member of the Commission serves as the Investigator, such member shall not vote on any such matter and shall recuse themselves from voting on any such matter.
- (b) **Scope of Investigation.** Investigations shall be limited to the allegations of the Complaint or the Hotline tip, but shall include an investigation of all facts and persons materially related to the Complaint or tip at issue.
- (c) **Evidence of Wrongful Acts Unrelated to the Complaint.** If during the course of an investigation evidence of a wrongful act not materially related to the Complaint or tip at issue is discovered by the Investigator, such evidence shall be reported to the Commission in a separate Investigator's report. The wrongful act shall not be further investigated by the Investigator in the absence of a Complaint with respect thereto. Upon receipt of a separate Investigator's report containing evidence of a wrongful act not materially related to the Complaint at issue, the Commission shall: (a) as soon as practicable forward evidence of the Commission of a crime to the appropriate law enforcement official; and/or (b) forward evidence of the Commission of any other wrongful act to the appropriate disciplinary or law enforcement official as soon as practicable following the

completion of the preliminary investigation. If upon independent investigation the appropriate official wishes to file a Complaint with the Commission he or she may do so and said Complaint shall be received and considered by the Commission in the same manner as any other Complaint.

- (d) **Investigator Contacts with Potential Witnesses.** The Investigator shall inform the person being interviewed of the Confidential nature of the investigation and of the Complaint, unless the Respondent has waived confidentiality in writing.
- (e) **Investigator to be Impartial.** An Investigator shall be impartial and unbiased in the conduct of the preliminary investigation. It is the duty of the Investigator to collect all evidence materially related to the allegations of the Complaint, whether such evidence tends to prove or disprove the allegations. If an Investigator feels that for any reason he or she cannot be impartial or unbiased during the preliminary investigation then such Investigator shall so notify the Ethics Director and Chair of the Commission and shall immediately discontinue working in the investigation. If the Commission feels that the Investigator cannot be unbiased or impartial at any point in time during the preliminary investigation, the Commission shall terminate any further investigation by the Investigator. The Commission may also terminate any further investigation by the Investigator if at any time there is the appearance of bias or partiality.
- (f) **Investigator's Report.** Upon the completion of either a preliminary investigation or investigation, the Investigator shall report to the Commission or Hotline Subcommittee as appropriate, in a properly noticed Executive Session.
- (g) **Investigatory File.** The Ethics Director shall maintain a Confidential investigatory file in the Ethics office, with the assistance of the Investigator if the Investigator is someone other than the Ethics Director.

Rule 11 – Commission Vote on Probable Cause

(a) **Commission to Vote.** The Commission shall conduct an Executive Session for a final vote on whether there is Probable Cause to move forward on an alleged violation pursuant to a Complaint. The Respondent shall have a right to be heard at the Executive Session before the vote of the Commission is taken. Respondent at the Executive Session may also be accompanied by and advised by counsel. The Respondent or his or her attorney may be permitted to make a submission in writing before the vote is taken.

(b) **Probable Cause Determination.**

(1) **Notification of Completion of Investigation.** When the Investigator's report is completed, the Ethics Director shall notify the Respondent that the report is completed and shall send to the Respondent a copy of the investigation report. The investigatory file and Complaint file shall be open for inspection by the Respondent and the Respondent's counsel, and copies may be obtained at no more than cost.

(2) **Time to Review Report.** The Respondent shall be given not less than 14 days from the date of mailing of the Investigator's report, within which time to file with the Commission a written response to the Investigator's report. This time period may be shortened with the consent of the Respondent, or without the consent of the Respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission so long as reasonable notice under the circumstances is given.

(3) **Advocate's Recommendation.** The Advocate shall review the Investigator's report and shall make a written recommendation to the Commission for the disposition of the Complaint. If the Advocate recommends that a public hearing be held, the recommendation shall include a statement of what charges shall be at issue at the hearing. A copy of the recommendation shall be furnished to the Respondent. The Respondent shall be given not less than 10 days from the date of mailing of the Advocate's recommendation, within which time to file with the Commission a written response to the recommendation. This time period may be shortened with the consent of the Respondent, or without the consent of the Respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission, so long as the recommendation is furnished to the Respondent within a reasonable period of time under the circumstances.

(4) **Notice of Hearing and Right to Attend.** The Respondent, the Complainant(s), their counsel, and the Advocate shall be permitted to attend the hearing at which the probable cause determination is made. Notice of the hearing shall be sent to the Respondent, Complainant(s), and Advocate at least 14 days before the hearing. This time period may be shortened with the consent of the respondent, or without the consent of the respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission, so long as the notice is furnished within a reasonable period of time under the circumstances.

(5) **Scope of Probable Cause Determination.** The probable cause determination is the conclusion of the preliminary investigation of the Complaint.

The Respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Commission, based on the Investigator's report, before the probable cause determination. The Commission's determination shall be based upon the Investigator's report, the Advocate's recommendation, the Complaint, and staff recommendations, as well as any written statements submitted by the Respondent and any oral statements made at the hearing. No testimony or other evidence will be accepted at the hearing.

(6) **Probable Cause Determination.** At its meeting to determine probable cause, the Commission may: (i) continue its determination to allow further investigation; (ii) may order the issuance of a public report of its investigation if it finds no probable cause to believe that a violation of the Ethics Laws has occurred, concluding the matter before it; (iii) may order a final, public hearing of the Complaint if it finds probable cause to believe that a violation of the Ethics Laws has occurred; or (iv) may take such other action as it deems necessary to resolve the Complaint, consistent with due process of law. In making its determination, the Commission may consider:

- (a) The sufficiency of the evidence against the Respondent, as contained in the record;
- (b) The admissions and other stipulations of the Respondent, if any;
- (c) The nature and circumstances of the Respondent's actions;
- (d) The expense of further proceedings; and
- (e) Such other factors as it deems material to its decision. If the Commission orders a public hearing of the Complaint, the Commission shall determine what charges shall be at issue for the hearing.

(c) **Finding of Probable Cause.** If the Commission votes in the affirmative that there is Probable Cause to proceed, the matter shall then proceed in accordance with these Rules to a Public Hearing.

Rule 12 – Public Hearing Procedures

(a) Counsel At the Public Hearing

(1) **Respondent.** Respondent may appear on his or her own behalf or may be represented by a lawyer. All notices and communications to a Respondent represented by a lawyer shall be made through the Respondent's lawyer.

(2) **Advocate.** The Advocate presenting the matter before the Commission shall be the Ethics Director, an attorney member of the Commission, the Office of General Counsel liaison, or outside counsel if authorized. The Advocate shall be appointed by the Chair of the Commission. The Advocate represents the Commission in its prosecutorial function. In the event an attorney member of the Commission serves as the Advocate, such member shall not vote on any such matter and shall recuse themselves from voting on any such matter.

(3) **Complainant.** To the limited extent the Complainant is entitled to participate or observe Commission proceedings, the Complainant may be represented by legal counsel. All notices and communications to a Complainant represented by a lawyer shall be made through Complainant's lawyer.

(b) Motions to Dismiss for Lack of Jurisdiction.

Within a reasonable time before a public hearing is to be held, Respondent may file with the Commission a written motion to dismiss the Complaint for lack of jurisdiction, which motion shall state with particularity the grounds therefore. The Respondent shall simultaneously serve a copy of any such motion upon the Advocate. The Commission shall hear arguments of the Respondent and Advocate in Executive Session on such motion prior to the hearing on the Complaint. If the Commission finds that it has jurisdiction over matters alleged in the Complaint, it shall deny Respondent's motion with respect to those allegations and shall proceed to the hearing. If the Commission finds that it has no jurisdiction over matters alleged in the Complaint, it shall order the Complaint dismissed with respect to those allegations and shall proceed in accordance with Rule 6 as if such allegations had been found insufficient under that rule.

(c) Notification of Manner of Disposition.

Upon the Commission's ordering a public hearing of a Complaint the Ethics Director or the Office of General Counsel shall, pursuant to a scheduling order by the Commission which shall include the deadline for filing a motion to dismiss, so notify the complainant and the respondent in writing.

(d) Parties to Public Hearings.

The person accused of a violation of Ethics Laws shall be the Respondent. Respondent shall be the only party unless consolidation of Complaints is granted. The Advocate shall be a full participant in the proceeding and shall present all the evidence relevant to the cause that was produced by the preliminary investigation and such additional evidence as may be obtained through further investigation.

(e) Public Hearing Procedures.

(1) **Presentation of the case.** The Advocate shall present his or her case first. Respondent may then present his or her case. Each member of the Commission may ask questions of any witness, including the Respondent if the Respondent chooses to testify. Rebuttal evidence may be permitted in the discretion of the Commission. Either the Advocate or the Respondent may ask, for good cause shown, that the hearing be adjourned for further proceedings in the event that such are indicated, and such adjournments may be granted in the discretion of the Commission.

(2) **Opening and closing statements.** Opening and closing statements may be presented by the Advocate and the Respondent. The Advocate shall proceed first, followed by the Respondent. The Advocate may make a rebuttal closing statement.

(3) **Evidence.** Stipulations may be received and are encouraged as to uncontested issues. Oral evidence may be taken only on oath or affirmation. The Respondent and the Advocate shall have the right to present relevant evidence, to cross-examine witnesses on relevant matters, and to impeach any witness on non-collateral matters regardless of which party first called the witness to testify. Any relevant evidence may be admitted, and the hearing shall not be conducted according to technical rules relating to evidence or witnesses. Hearsay evidence may be used to supplement or explain other evidence, but only to the extent the Commission determines the hearsay to be reliable. The rules as to attorney-client or other privileges shall be effective to the same extent that they appear in the Florida Evidence Code. Irrelevant or cumulative evidence may be excluded at the discretion of the Chair with the consensus of the Commission. Affidavits shall generally not be admissible, but may be admitted for such weight as is reasonable if the affiant is unavailable to testify as defined in the Florida Rules of Evidence. Any relevant evidence regarding an admission made by the Respondent outside of the public hearing, if such evidence is given by a person with personal knowledge of the statement, is not hearsay and shall be admitted. The rule of sequestration of witnesses may be invoked by any party or by the Commission in its discretion.

(4) **Recording of the proceedings.** The proceedings at a public hearing shall be recorded by electronic means in the same manner that all public meetings of the Commission are recorded. No transcript shall ordinarily be prepared unless requested and paid for in advance by the Respondent. Nothing in these rules shall be construed to prevent the Respondent from providing a court reporter for a public hearing at his or her own expense.

(5) **Scheduling Order.** At the discretion of the Commission, a scheduling order may be issued which includes allocated time for each party, as well as other matters.

(f) **Transmittal of Public Report.**

Following the conclusion of the hearing, a public report shall be drafted and agreed upon by a majority of the Commission. Any member not in the majority may draft and file a dissent, or may simply note that he or she dissents. The public report shall be signed by the Chair, shall be transmitted by mail to the Respondent and Complainant, and shall be made available to the public. Both the Respondent and the Advocate may, upon request of the Commission and within a time frame designated by the Chair, present written proposed public reports to assist the Commission in its deliberations and preparation of the public report.

Rule 13 – Confidentiality

(a) **Proceedings Confidential.** Except as otherwise provided in these rules or by law, the Complaint and Commission activities, proceedings, and documents relating to the Complaint shall be confidential until either:

- (1) Confidentiality is waived in writing by the Respondent; or
- (2) The Commission orders the Complaint dismissed, or
- (3) The Commission orders a public hearing.

When Confidentiality is waived, the Commission orders the Complaint dismissed, or the Commission orders a public hearing, all materials relating to the Complaint shall become public records available to the public as provided in Chapter 119, Florida Statutes, except to the extent the materials are otherwise exempted from disclosure by law or court order.

- (b) **Communication to Respondent.** The Confidentiality provided by this rule shall not prohibit the Commission or the Ethics Director from advising the Respondent or the Complainant about the status of the Complaint proceeding.

Rule 14 – Disqualification of Commission Members.

- (a) **Disqualification in General.** Commission members shall be disqualified from sitting as a member of the Commission at either the Probable Cause hearing or the final public hearing for bias, prejudice, or conflict of interest. Disqualification may be raised by a party, or by any member of the Commission.
- (b) **Time limitation.** Unless good cause is shown, all motions for disqualification shall be filed with the Commission at least 5 days prior to the hearing at which the member is expected to participate. The motion shall be accompanied by an affidavit stating the particular grounds.
- (c) **Disqualification on Legally Sufficient Motion and Affidavit.** Unless denied as untimely, the motion shall be ruled on by the Commission member whose disqualification is sought; the ruling shall be based on the legal sufficiency of the motion and affidavit. If the motion and affidavit are found legally sufficient, the member shall disqualify himself or herself.
- (d) **Automatic Disqualification.** Any member of the Commission shall recuse him or herself on his or her own motion on all matters relating to a complaint pending against the person who appointed him or her to the Commission, or against any particular member of a collegial body who appointed him or her, or against any relative by blood or marriage as defined in Section 112.3135(1)(d) of the Florida Statutes or against any persons with whom the member does business within the meaning of Section 112.313(3) of the Florida Statutes, or with whom the member has an employment or contractual relationship within the meaning of Section 112.313(7) of the Florida Statutes.

Rule 15 – Ex Parte Communications.

- (a) **Ex Parte Communications Disfavored.** A Commission member who is not acting as Investigator or advocate for the Commission shall not initiate nor consider any Ex Parte communication relative to the merits of a pending Complaint.
- (b) **Ex Parte Disclosure.** A Commission member should disclose Ex Parte Communications received from any of the following: (1) A public employee or official engaged in prosecution or advocacy in connection with the matter; or (2)

A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed action of the Commission, or his or her counsel; or (3) A Complainant or any other individual who has personal knowledge of the facts underlying the proceeding, or his or her counsel or (4) An elected official.

- (c) **Procedure on Receipt of an Ex Parte Communication.** A Commission member who receives such an Ex Parte communication shall place on the record of the matter all written communications received, or a memorandum stating the substance of all oral communications received, and shall also advise all parties that such matters have been placed on the record. Any party, including the Ethics Director, desiring to rebut the Ex Parte communication shall be allowed to do so, if a request for the opportunity for rebuttal is made within 10 days after notice of the communication.

Rule 16 – Formal Actions.

In order to issue public censures or recommend disciplinary action, the Commission must have ruled that an existing Jacksonville Ethics Code provision has been violated based on Clear and Convincing Evidence.

Rule 17 – Dismissal of Violation; Resolution.

The Commission may, at its discretion and at any stage of the process:

- a) Dismiss a complaint upon determining that the public interest would not be served by proceeding further; or
- b) Dismiss a complaint and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial; or
- c) Dismiss a complaint in accordance with a request from the State Attorney, U.S. Attorney or other law enforcement agency; or
- d) At any time, with a majority vote by the Commission, the parties may enter into a settlement or resolution of the issues which may include an apology, a stipulated fine or other action. Such settlements and the reasons for entering into one, shall be made in writing and be a public record.