

ETHICS COMMISSION
CITY OF JACKSONVILLE



COMPLAINT PROCEDURES

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COMPLAINT PROCEDURES

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Rule 1 – Scope, Jurisdiction, Definitions and Applicability.

- (a) **Enabling Law.** These Complaint Procedures (“Procedures”), pursuant to the Code, shall govern the receipt and disposition of all Complaints to the Commission concerning violations of the Code. These Procedures shall become effective as of the date of adoption by the Commission. As of the date these Procedures are adopted, they shall govern disposition of all Complaints regardless of date of filing.
- (b) **Jurisdiction.** The Commission shall have jurisdiction as stated the Code and the Charter of the City of Jacksonville.
- (c) **Definitions.** Definitions are defined in the Code, Section 602.201, and in these Procedures as follows:

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 reasonable hesitation, about the matter in issue.

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

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

Complaints Committee means a division of the Commission vested with the jurisdiction to receive Complaints, recommend self-initiation of Complaints to the full Commission, appoint Investigators and Special Ethics Counsel(s), dismiss Complaints, recommend a finding of Probable Cause to the full Commission, submit a Sworn Complaint to the Hearing Panel for public proceedings, and conduct such other proceedings as necessary or ancillary to its duties under the Code and these Procedures. The Complaints Committee shall be comprised of no less than three members of the Commission. Decisions within the authority vested in the Complaints Committee under these Procedures are not reviewable by the full Commission.

Confidentiality means the authority, pursuant to Fla. Stat. § 112.324 and Code § 602.921(a), to hear pending Complaints in Executive Session and to hold documents relating to Complaints in a confidential manner, so they are not subject to public records laws until authorized by statute, in accordance with these Procedures.

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

Complaint means an alleged violation of the Code which has been brought to the attention of the Office of Ethics, Compliance and Oversight or the Commission. In accordance with the Code, a 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 Commission. (Section 602.921(a)). For the purposes of these Procedures, the term Complaint shall apply to all types of Complaints.

Ethics Deputy Director means the person appointed by the Commission as the Deputy Director of the Office of Ethics, Compliance and Oversight.

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 Fla. Stat. § 112.324 (shade meetings); these meetings shall be recorded, pursuant to Code § 602.931(c).

Ex Parte Communications means any oral or written communication to a decision-making official relative to a matter before the decision-making body that occurs outside of an Executive Session or advertised public meeting pursuant to Fla. Stat. § 286.011, as set forth in Rule 15. Ex Parte Communications shall not include any communications between a decision-making official and: (1) staff of the Office of Ethics, Compliance and Oversight, (2) staff of the Office of General Counsel assigned to represent the Commission, (3) between or among the Complaints Committee Chair, Special Ethics Counsel, and/or Investigator, or (4), which concerns only scheduling matters.

Hearing Officer means such person as may be appointed by the Hearing Panel pursuant to Rule 12(f) to conduct proceedings and issue reports and recommendations on matters referred by the Hearing Panel relative to a Complaint. To serve as Hearing Officer, the candidate must be and have been a member of The Florida Bar in good standing for the preceding five years. A member of the Commission may serve as a Hearing Officer if otherwise qualified, but cannot have participated in or attended any Executive Session

at which the Complaint for which he or she is appointed to serve as Hearing Officer was discussed.

Hearing Panel means a division of the Commission vested with the authority to receive and hear Complaints after a finding of Probable Cause by the Commission, to recommend a finding of violation of the Code to the full Commission, dismiss Complaints, and conduct such other proceedings as necessary or ancillary to its duties under the Code and these Procedures. The Hearing Panel shall be comprised of at least three members of the Commission who did not participate in or attend any Executive Session at which the Complaint for which they are appointed to serve on the Hearing Panel was discussed, unless the Executive Session(s) concerned referrals from the Complaints Committee pursuant to Rules 8, 11(b)(5), or 17(b) or unless waived by the Commission. Decisions within the authority vested in the Hearing Panel under these Procedures are not reviewable by the full Commission.

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

Inspector General means the City of Jacksonville Inspector General's Office, including the Inspector General and members of the Inspector General's staff.

Investigator means the Ethics Director, a member of the Office of Ethics, Compliance and Oversight, the Council Auditor, the Office of General Counsel liaison to the Commission, the Inspector General, one or more members of the Commission or any other appropriate person or municipal agency who is authorized by these Procedures 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 the Code.

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

Respondent means the individual who is the subject of the Complaint.

Self-Initiated Complaint means a Complaint instituted by the Ethics Commission in accordance with Code § 602.921 and Rule 8.

Special Ethics Counsel means the individual appointed by the Complaints Committee to conduct appropriate investigation, gather and present evidence before the Commission (or any division thereof) with respect to a Complaint, and otherwise advise the Complaints Committee in connection with the prosecution of a Complaint. Any individual as set forth in Rule 11 may serve as Special Ethics Counsel.

Sworn Complaint means a Complaint initiated by the receipt of a Complaint which is signed by a Complainant under oath and otherwise compliant with Rule 5(b).

- (d) **Amendment to Procedures.** These Procedures may be amended at any regular meeting by a majority vote of the Commission, provided that the amendment has been submitted in writing (1) at the previous regular meeting or (2) to the Ethics Director and Office of General Counsel liaison to the Commission at least 10 days prior to the Ethics Commission meeting at which the Procedures will be amended. For amendments submitted under Rule 1(d)(2), the Office of Ethics, Compliance and Oversight shall transmit the proposed amendments to all members of the Commission before the Commission meeting at which the Procedures will be amended. Amendments to the Procedures govern all future proceedings of the Commission, including those proceedings on pending cases.

Rule 2 – Time Periods and Statute of Limitations.

- (a) **Computation of Time.** In computing any period of time prescribed or allowed by these Procedures, the time period shall be calculated using City of Jacksonville business days only, unless otherwise specified in the Rule.
- (b) **Statute of Limitations.** No action may be taken on a Complaint filed more than two 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). Notwithstanding anything else in these Procedures, a Complaint alleging prevention of discovery of a violation must allege specific facts supporting that conclusion. A Complaint that is filed more than two years after the violation is alleged to have occurred and does not allege specific facts to support a finding that fraud or other device prevented discovery of the alleged violation shall be considered legally insufficient and may be returned by the Ethics Director pursuant to Rule 6(a).

- (c) **Extending or Shortening Time.** Other than Rule 2(b), the periods of time in these Procedures are not jurisdictional and the Complaints Committee, Hearing Panel, or the relevant division's Chairs may (1) extend periods of time for good cause, (2) shorten periods of time with the consent of the person subject to such period of time, and (3) shorten periods of time without the consent of the person subject to such period of time when the Complaints Committee, Hearing Panel, or the relevant division's Chair decides the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission, Hearing Panel, or Complaints Committee, so long as the relevant authority decides the shortened period of time provides reasonable time under the circumstances.

Rule 3 – Filing and Serving Documents; Email Transmissions.

Documents under these Procedures shall be filed with the City of Jacksonville's Office of Ethics, Compliance and Oversight, and served, when service is required, by email, mail, hand delivery, or any combination thereof, except where specifically provided otherwise herein.

Rule 4 – Presiding Officer of Hearing Panel.

For purposes of proceedings under these Procedures before the Hearing Panel, the presiding officer shall be the Chair of the Commission or, in the event the Chair is unavailable, the Vice Chair of the Commission. The presiding officer may appoint another Commission member to serve as presiding officer for any reason in his or her discretion.

Rule 5 – Procedures Upon Receipt of a Complaint of Violation of the Code.

- (a) **Safeguarding Confidential Materials.** Upon receipt of a Complaint, the Office of Ethics, Compliance and Oversight shall print on the face thereof the date on which the Complaint was received in the Office of Ethics, Compliance and Oversight. 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 filed in 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 ensure 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. 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 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. 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) **Assistance.** The Ethics Director or the Ethics Deputy Director shall provide assistance or information to persons seeking to file a Complaint, but shall not solicit or discourage the filing of a Complaint.
- (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 Office of Ethics, Compliance and Oversight within ten days of its receipt. Subsequent sworn amendments to the Sworn Complaint shall be transmitted to the Respondent within ten days of their receipt. If the Respondent submits a written request to the Office of Ethics, Compliance and Oversight for transmittal by any other means, the Office of Ethics, Compliance and Oversight may, at the Ethics Director's discretion, use the requested means, use hand delivery, or use certified mail. The Ethics Director shall transmit the Sworn Complaint with a cover letter that includes (without limitation) information on access to the Commission's Procedures, ways to contact the Commission, and information on how to submit documents or settlement proposals. The Ethics Director may elect, with the permission of the Chair of the Complaints Committee, 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 another state or municipal agency or for other good cause. In such event, the Ethics Director shall, at the next scheduled Executive Session of the Complaints Committee, inform the Complaints Committee of the decision to delay service. The Complaints Committee may review the decision to delay service and decide, by majority vote, whether to affirm or reverse the delay of service.
- (e) **Submissions to the Commission.** The Respondent and/or his or her counsel may, in their discretion and at any time during any stage of the Commission's proceedings, make written submissions to the Commission, which may include

proposals to resolve Complaints pursuant to Rule 17, by filing those submissions with the Office of Ethics, Compliance and Oversight.

- (f) **Complaints Within 30 Days of Election Returned.** Any Complaint against a candidate in a general, special, or primary election that is received within the thirty days immediately preceding the date of that election, will be returned by the Office of Ethics, Compliance and Oversight to the person filing the Complaint, with an explanation of why the Complaint is being returned without any action being taken by the Commission. A Complaint returned pursuant to this provision and subsequently refiled after the election shall be deemed to have been filed on the date the Complaint was first submitted to the Office of Ethics, Compliance and Oversight.
- (g) **Probable Cause Determination.** Complaints that are not otherwise disposed of, shall then proceed to subsequent investigation pursuant to these Procedures and, if applicable, consideration by the Complaints Committee and Commission to determine whether Probable Cause exists that a violation of the Code occurred, in accordance with Rule 11.
- (h) **Consolidation of Complaints Before the Complaints Committee.** When Complaints against multiple individuals involving a common question of law or fact are simultaneously pending before the Complaints Committee, the Complaints Committee may order the Complaints consolidated. Before ordering consolidation, the Complaints Committee shall consider whether each Complaint will be separately resolved or referred to the Hearing Panel simultaneously to avoid conflicts with public records laws if one Complaint is resolved before a consolidated Complaint. The Complaints Committee may not order consolidation of individual issues, only full consolidation. The Complaints Committee may not order consolidation over the objection of the Office of General Counsel liaison to the Commission, provided such objection expressly is based on legal concerns.
- (i) **Consolidation or Severance of Complaints or Issues Before Hearing Panel or Hearing Officer.** When Complaints against multiple individuals involving a common question of law or fact are simultaneously pending before the Hearing Panel or Hearing Officer, the Hearing Panel or Hearing Officer may order a joint hearing or trial of any or all the matters at issue in the Complaints, may order all the Complaints consolidated, and/or may issue such orders concerning Complaints therein as may tend to avoid unnecessary costs or delay. The Hearing Panel or Hearing Officer in furtherance of convenience or to avoid prejudice may order a separate hearing of any separate issue or of any number of issues.

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

- (a) **Review for Legal Sufficiency and/or Jurisdiction.** 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 the Code that occurred within the statute of limitations (Section 602.939). If the facts in the Complaint (1) fail to allege a violation of the Code, (2) allege a violation of state ethics laws or dual jurisdiction under state and local ethics laws, or (3) a violation of the Code that occurred wholly outside the statute of limitations, the Ethics Director may, with notice to the Complaints Committee and the approval of its Chair, return the Complaint to the Complainant with notice pursuant to Rule 6(b). 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 for purposes of Rule 6(a) if the Complainant sufficiently alleges facts which, liberally construed and if true, would constitute a violation of the Code. 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, consult with the Office of General Counsel liaison to the Commission, and obtain information from public records or otherwise.
- (b) **Notice of Return.** If a Complaint is returned pursuant to Rule 6(a), the Ethics Director shall provide written notice informing the Complainant of the reason for the return (whether Rule 6(a)(1), 6(a)(2), or 6(a)(3)). If a Complaint is returned pursuant to Rule 6(a)(2), the notice of return shall include instructions on how to file a Complaint with the Florida Commission on Ethics. All notices pursuant to Rule 6(b) shall contain the following language in all capital letters and 14-point font: YOU MAY SEEK REVIEW OF THE DECISION TO RETURN YOUR COMPLAINT PURSUANT TO RULE 6(c) OF THE COMPLAINT PROCEDURES OF THE JACKSONVILLE ETHICS COMMISSION, AVAILABLE AT [Ethics Director to insert current website address for these Procedures]. THE PROCEDURES IMPOSE IMPORTANT DEADLINES AND OTHER REQUIREMENTS THAT YOU MUST CHECK IMMEDIATELY TO AVOID WAIVER OF REVIEW.
- (c) **Review of Rule 6(a) Return.** If a Complaint is returned pursuant to Rule 6(a), the Complainant may—by written request filed with the Office of Ethics, Compliance and Oversight within fifteen days of the Ethics Director’s transmittal of the notice of return—seek review by the Complaints Committee. The written request may include additional argument and evidence. In such event, the decision to return the

Complaint shall be reviewed by the Complaints Committee at an Executive Session, at which the Complaints Committee shall decide, by majority vote, whether to affirm or reverse the decision to return the Complaint. The Complaints Committee shall review the Ethics Director's decision without deference (as if deciding the matter for the first time). If no written request for review pursuant to this Rule 6(c) is received by Office of Ethics, Compliance and Oversight within fifteen days of the Ethics Director's transmittal of the notice of return, the Ethics Director's return shall constitute final action of the Commission and the Complaint and all documents related thereto shall become a public record and constitute a public report.

- (d) **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 and permission of the Chair of the Complaints Committee or, if he or she is unavailable, the Vice-Chair, (1) commence a preliminary investigation of the Complaint, (2) refer it to any other agency whose jurisdiction or purview is appropriate, or (3) prepare it for Complaints Committee consideration. The Chair of the Complaints Committee may schedule an Executive Session of the Complaints Committee, as appropriate. In the event of a referral to another agency, pursuant to Code § 602.938, the Complaints Committee may dismiss or 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 Florida Commission on Ethics.
- (e) **Executive Sessions.** If an Executive Session is scheduled, the Complaint shall be brought before the Complaints Committee in Executive Session with the recommendations of the Ethics Director, including (without limitation) recommendations for appointments of the Investigator and Special Ethics Counsel. The Complaints Committee 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 by the Complaints Committee, 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.
- (f) **Personnel Actions.** When an Employee of the City or one of its agencies is alleged to have violated the Code 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 Code § 602.938, the Complaints Committee 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. Prior to a finding of Probable Cause, this authority is vested in the Complaints Committee. After a finding a Probable Cause, this authority is vested in the Hearing Panel. Withdrawal shall be requested in writing and shall be signed by the Complainant(s) and sworn before a notary public, stating the facts and circumstances constituting good cause for withdrawal of the Complaint. The Ethics Director shall prepare a recommendation regarding disposition of the request, which shall be given to the relevant division of 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 Code, the stage in disposition of the Complaint at the time the request was received, whether the Complaint should proceed in the judgment of the relevant division of the Commission despite the Complainant's wishes, the reasons given by the Complainant(s) for wishing to withdraw the Complaint, and any other considerations important to the Commission. If withdrawal is permitted, the relevant division of the Commission shall order the Complaint dismissed and shall proceed as if the Complaint had been found insufficient under Rule 6(e). Whether or not the Commission allows withdrawal of the Complaint, the Commission may also proceed with the Complaint on their own initiation, subject to self-initiation Procedures.

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

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

- (a) **Executive Session.** Pursuant to Fla. Stat. § 112.324, any discussions by a Commission member about initiating an investigation against any person subject to the Code shall be initiated in either an Executive Session of the Complaints 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 or that the discussion be added to the agenda for the next scheduled meeting.
- (b) **Executive Session of the Complaints Committee.** The Complaints Committee shall handle the initial discussions and investigations of any Complaint matters in an Executive Session. After deliberation(s), the Complaints 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 self-initiate a Sworn Complaint.

- (c) **Assistance to the Complaints Committee.** The initial recommendation of the Complaints Committee shall be done with the assistance of the Ethics Director and the Office of General Counsel liaison to the Commission.
- (d) **Notice of Complaints Committee Recommendation to Respondent.** After the Complaints 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 days prior to the meeting of the Executive Session of the Commission when the Commission will consider whether to self-initiate a Complaint.
- (e) **Transmittal of Complaint to Executive Session of the Commission.** The recommendation of the Complaints 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 Code, which such vote shall require a minimum of six 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 or, if the Chair votes against self-initiating, by the Vice Chair, Complaints Committee Chair, or senior member of the Commission who voted in favor of self-initiating. The Self-Initiated Complaint then shall be referred to the Complaints Committee for such further proceedings as any other Sworn Complaint.
- (f) **Respondent's Right to Attend Executive Session of the Commission.** The Respondent and/or his or her 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 his or her 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 Office of Ethics,

Compliance and Oversight within ten days of the Commission’s Executive Session meeting where the Commission approves commencement of a Self-Initiated Complaint. If the Respondent submits a written request to the Office of Ethics, Compliance and Oversight for transmittal by any other means, the Ethics Director may, at his or her discretion, use the requested means, use hand delivery, or use certified mail.

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

- (a) **Receipt and Review of Hotline Tips or Complaints.** The Office of Ethics, Compliance and Oversight shall review Hotline tips or Complaints and report them to the Complaints Committee. Hotline tips shall be treated as anonymous if the Complainant does not identify himself or herself and does not provide any identifying information. In accordance with Fla. Stat. § 112.324(2)(e), identifying information provided by a Complainant will become public record when the Complaint becomes a public record pursuant to these Procedures and applicable law. Hotline tips may relate to various issues within the City, and the Office of Ethics, Compliance and Oversight may coordinate contact with the appropriate City department. The Ethics Director may promulgate additional operational procedures to regulate the Hotline and processing of Hotline tips.
- (b) **Presentation to Complaints Committee.** When the Ethics Director presents a Hotline tip or Complaint to the Complaints Committee for review, he or she shall provide a recommendation. After review of the Complaints Committee, Hotline tips may be further investigated and Complaints shall be processed in accordance with Rule 6 or, if applicable, Rule 8.
- (c) **Hotline Tip or Other Complaint Procedure.** Unless disposed otherwise in accordance with these Procedures, all Hotline tips and Complaints shall be reviewed, considered and determined by the Complaints Committee for further investigation, action or disposal as follows: (1) if it’s not a violation of the Code, it shall be disposed of by the Complaints Committee; (2) if it’s an alleged violation of another jurisdiction’s purview, it may be referred to the appropriate agency by the Complaints Committee, if applicable and where appropriate; (3) if it’s an alleged violation of the Code, it may be further investigated pursuant to Rule 10; or (4) otherwise dismissed by the Complaints Committee pursuant to Rule 17.

Rule 10 – Investigations

- (a) **Investigations.** At the discretion of the Chair of the Complaints Committee, investigations of any matters not referred to an outside agency may be conducted by the Office of Ethics, Compliance and Oversight, by the Council Auditor, by the

Office of General Counsel liaison to the Commission, by the Inspector General, by one or more members of the Complaints Committee, 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 have served on the Complaints Committee at the time of the Probable Cause finding for the particular Complaint for which the Investigator is appointed or on the Hearing Panel for that Complaint. The Complaints Committee may appoint or authorize the Investigator to appoint Assistant Investigators, and once confirmed by the Complaints Committee, shall have the same authority as the Investigator unless limited by the Complaints Committee or by the Investigator.

- (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 related to the Complaint or tip at issue.
- (c) **Evidence Unrelated to the Complaint.** If, during the course of an investigation, the Investigator discovers evidence of a wrongful act not materially related to the Complaint or tip at issue or facts giving the Investigator reason to suspect a different potential violation of the Code, the Investigator shall submit such evidence and/or facts to the Complaints Committee in a separate Investigator's report. The Investigator shall not further investigate such wrongful act or potential violation(s) without further direction from the Complaints Committee. Upon receipt of a separate Investigator's report containing such evidence or facts, the Complaints Committee shall: (1) as soon as practicable forward evidence of the commission of a crime or other wrongful act to the appropriate disciplinary or law enforcement official and/or (2) treat potential violations of the Code in the same manner as a Hotline tip. If such official or if the Investigator wishes to file a Sworn Complaint with the Commission, he or she may do so and said Sworn Complaint shall be received and considered by the Commission in the same manner as any other Sworn Complaint. Investigator's reports pursuant to Rule 10(c) shall be maintained as part of the Confidential file with the information treated as a Hotline tip, and shall be transmitted to the Respondent together with the information required by Rule 8(d).
- (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 strive to 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 investigation then such Investigator shall so notify the Ethics Director or Chair of the Complaints Committee and shall immediately discontinue working on the investigation. If the Complaints Committee feels that the Investigator cannot be unbiased or impartial at any point in time during the preliminary investigation, the Complaints Committee shall terminate any further investigation by the Investigator. The Complaints Committee may also terminate any further investigation by the Investigator if at any time there is the appearance of bias or partiality. No Complainant may serve as an Investigator while his or her Complaint is active before the Commission. The Investigator serves at the pleasure of the Complaints Committee, which may relieve or replace an Investigator for any reason at any time.

- (f) **Investigator's Report.** Upon the completion of either a preliminary investigation or investigation, the Investigator shall report to the Complaints Committee in an Executive Session.
- (g) **Investigatory File.** The Ethics Director shall maintain a Confidential investigatory file in the Office of Ethics, Compliance and Oversight with the assistance of the Investigator, if the Investigator is someone other than the Ethics Director.
- (h) **Special Ethics Counsel.** The Complaints Committee shall appoint a Special Ethics Counsel to present the matter before all divisions of the Commission. The Special Ethics Counsel shall be the Ethics Director, an attorney member of the Office of Ethics, Compliance and Oversight, a member of the Office of General Counsel, or a member of The Florida Bar appointed by the Complaints Committee. The Special Ethics Counsel represents the Commission in its prosecutorial function. The Office of General Counsel liaison to the Commission may serve as Special Ethics Counsel only if the General Counsel assigns another lawyer to advise the Hearing Panel during the public hearing. The Complaints Committee may appoint or authorize the Special Ethics Counsel to appoint Assistant Special Ethics Counsel(s), and once confirmed by the Complaint Committee, shall have the same authority as the Special Ethics Counsel unless limited by the Complaints Committee or by the Special Ethics Counsel. The same person(s) may serve both as Special Ethics Counsel and Investigator at the discretion of the Complaints Committee, provided such person(s) meets the qualifications for both roles under these Procedures.

Rule 11 – Procedure Leading to Probable Cause

- (a) **Commission to Vote.** Unless a Complaint is otherwise resolved by the Complaints Committee, 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. At the Executive Session, Respondent may be represented, accompanied and/or advised by counsel.

(b) **Probable Cause Determination.**

(1) **Notification of Completion of Investigation.** When the Investigator's report is completed, the Office of Ethics, Compliance and Oversight 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.** Within ten days from the date of transmittal of the Investigator's report, the Respondent may file with the Office of Ethics, Compliance and Oversight a written response to the Investigator's report, which may include a proposal to settle or otherwise resolve the matter pursuant to Rule 17.

(3) **Special Ethics Counsel's Recommendation.** The Special Ethics Counsel shall review the Investigator's report and shall make a written recommendation to the Complaints Committee for the disposition of the Complaint. If the Special Ethics Counsel 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. Within ten days from the date of transmittal of the Special Ethics Counsel's recommendation, the Respondent may file with the Office of Ethics, Compliance and Oversight a written response to the recommendation.

(4) **Review Hearing.** The Complaints Committee shall meet in Executive Session to review the Investigator's report, Special Ethics Counsel's recommendation, and any responses. At this review hearing, the Complaints Committee may (A) continue its determination to allow further investigation; (B) issue a written order dismissing the Complaint if it finds no Probable Cause to believe that a violation of the Code has occurred, concluding the matter before the Commission; (C) refer the Complaint to the full Commission (with or without a recommendation) to determine Probable Cause; or (D) take such other action as it deems necessary to resolve the Complaint, consistent with due process of law.

(5) **Probable Cause Hearing.** If the Complaints Committee refers the Complaint to the full Commission to determine Probable Cause, the Commission

shall consider the Complaint in Executive Session. The Respondent, the Complainant(s), their respective counsel, and the Special Ethics Counsel shall be permitted to attend the Probable Cause hearing before the Commission. Notice of the hearing shall be sent to the Respondent, Complainant(s), and Special Ethics Counsel at least fifteen days before the hearing.

(6) Scope of Probable Cause Determination. The Probable Cause determination is made by simple majority vote of the full Commission at the conclusion of the preliminary investigation of the Complaint and the conclusion of all proceedings before the Complaints Committee. The Respondent and the Special Ethics Counsel shall be permitted to make brief oral arguments to the Commission before a finding of Probable Cause.

(7) Probable Cause Hearing Outcomes. At its meeting to determine Probable Cause, the Commission may: (A) continue its determination to allow further investigation; (B) issue a written order dismissing the Complaint if it finds no Probable Cause to believe that a violation of the Code has occurred, concluding the matter before the Commission; (C) refer the Complaint for a final, public hearing before the Hearing Panel pursuant to Rule 11(c); or (D) take such other action as it deems necessary to resolve the Complaint, consistent with due process of law.

(8) Consideration for Probable Cause Determination. The Commission's determination shall be based upon the Investigator's report, the Special Ethics Counsel's recommendation, the Complaint, other evidence or statements received from any participant at least ten days before the Probable Cause Hearing, and staff recommendations, as well as any oral arguments made at the hearing. No testimony or other evidence will be accepted at the hearing. 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.

- (c) **Finding of Probable Cause.** If the Commission votes in the affirmative that there is Probable Cause to proceed, the Commission shall determine what charges shall be at issue for the hearing and the matter shall then proceed in accordance with these Procedures to a Public Hearing before the Hearing Panel.

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. Subsequent to initial transmittal of the Complaint, all notices and communications to a Respondent represented by a lawyer shall be made through the Respondent's lawyer.

(2) **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 Office of Ethics, Compliance and Oversight a written motion to dismiss the Complaint for lack of jurisdiction, which motion shall state with particularity the grounds therefore. The Respondent shall simultaneously transmit a copy of any such motion to the Special Ethics Counsel. The presiding division shall meet to consider and resolve the motion to dismiss. If the presiding division finds that the Commission has jurisdiction over matters alleged in the Complaint, it shall deny Respondent's motion with respect to those allegations and shall continue its proceedings. If the presiding division finds that the Commission has no jurisdiction over matters alleged in the Complaint, it shall issue a written decision ordering the dismissal of the Complaint with respect to those allegations. The Special Ethics Counsel and Respondent may attend and provide oral argument at any meeting at which a division of the Commission will vote to resolve a motion to dismiss under Rule 12(b). A motion under Rule 12(b) does not operate to stay any proceedings before the Commission, any division, or a Hearing Officer.

- (c) **Notification of Manner of Disposition.** Upon the Hearing Panel's ordering a public hearing of a Complaint, the Office of Ethics, Compliance and Oversight shall transmit the Hearing Panel's scheduling order, which shall include the deadline for

filing a motion to dismiss, to the Special Ethics Counsel, Complainant, and Respondent.

(d) **Parties to Public Hearings.** The person against whom the Commission has found Probable Cause shall be the Respondent. Respondent shall be the only party unless consolidation of Complaints is granted. The Special Ethics Counsel 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 Special Ethics Counsel shall present his or her case first. Respondent or his or her counsel may then present his or her case. Each member of the Hearing Panel may ask questions of any person presenting a case and of any witness, including the Respondent. Rebuttal evidence may be permitted in the discretion of the Hearing Panel. Either the Special Ethics Counsel or the Respondent may ask, for good cause shown, that the hearing be recessed for further proceedings in the event that such are indicated, and such recess may be granted in the discretion of the Presiding Officer.

(2) **Opening and closing statements.** Opening and closing statements may be presented by the Special Ethics Counsel and the Respondent or his or her counsel. The Special Ethics Counsel shall proceed first, followed by the Respondent. The Special Ethics Counsel 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 Special Ethics Counsel shall have the right to present relevant evidence, to cross-examine witnesses within the scope of their direct testimony, and to impeach any witness on non-collateral matters regardless of which participant 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 Presiding Officer 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 Presiding Officer. Affidavits shall generally not be admissible, but may be admitted for such weight as is reasonable if the affiant refuses or is unavailable to testify as defined in the Florida Evidence Code. 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 the Presiding Officer in his or her discretion, on his or her own motion or at the request of any participant.

(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 Procedures 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 Presiding Officer, the scheduling order may include allocated time for each participant, as well as other matters.

(f) **Referral to Hearing Officer.**

(1) The Hearing Panel may, in its discretion and by majority vote, appoint a Hearing Officer and refer to such Hearing Officer any evidentiary or non-evidentiary matter relative to a Complaint. The Hearing Officer may conduct such proceedings as he or she deems appropriate and shall follow all Procedures that would apply if the Hearing Panel handled the referred matter, including (without limitation) Rule 14, except that a Hearing Officer does not have authority to consider resolutions pursuant to Rule 17.

(2) In proceedings before a Hearing Officer, the Hearing Officer acts as Presiding Officer and Hearing Panel, and the Hearing Officer shall submit a report and recommendation to the Hearing Panel on each dispositive matter within the Hearing Officer's referral. If a Complaint is referred to a Hearing Officer to handle the Public Hearing and recommend a final disposition of the Complaint, the Hearing Officer shall submit his or her report to the Hearing Panel within thirty days after the conclusion of the hearing or within such extended period of time as may be allowed by the Presiding Officer of the Hearing Panel. The Hearing Officer's report regarding recommendation of final disposition shall include: (A) findings of fact as to each violation of the Code of which the Commission found Probable Cause; (B) recommendations as to whether the Respondent should be found in violation of the Code, justifying disciplinary measures; (C) recommendations as to the disciplinary measures and/or civil fines to be imposed by the Hearing Panel; (D) a statement of any past disciplinary measures as to the Respondent that are on record with the Office of Ethics, Compliance and

Oversight or that otherwise become known to the Hearing Officer through evidence during the course of the proceedings; and (E) a statement of costs incurred and recommendations as to the manner in which such costs should be taxed, if authorized by the Code.

(3) The Presiding Officer of the Hearing Panel shall review non-dispositive reports and recommendations from Hearing Officers. The full Commission shall review dispositive reports and recommendations from Hearing Officers. The Commission shall not reject or modify findings of fact made by a Hearing Officer unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. The Commission shall review legal conclusions and recommendations of discipline without deference (as if deciding the matter for the first time). In the discretion of the Presiding Officer of the Hearing Panel, the Commission may allow presentation of argument, written or oral. No additional evidence may be submitted after the conclusion of the Public Hearing before the Hearing Officer. Upon receipt of a Hearing Officer's report, the Presiding Officer of the Hearing Panel shall schedule a public hearing before the Commission to consider whether to adopt, modify, or reject, in whole or in part, the Hearing Officer's report and recommendations as the Public Report of the Commission. In the notice scheduling that public hearing, the Presiding Officer of the Hearing Panel shall indicate what additional argument the Commission will consider (if any) and set deadlines for written submissions (if allowed).

(4) Where a Complaint is decided by the Hearing Panel without referral to a Hearing Officer, the Hearing Panel's (A) non-dispositive decisions and (B) decision finding no violation of the Code, are not reviewable by the full Commission except as allowed by Rule 17(b). If the Hearing Panel rules that an existing Code provision has been violated based on Clear and Convincing Evidence, the Hearing Panel shall prepare a report and recommendation to the full Commission the same way that a Hearing Officer would under Rule 12(f)(2). The Commission shall review the Hearing Panel's report the same way it would a Hearing Officer's report under Rule 12(f)(3).

(g) **Transmittal of Public Report.** Following the conclusion of the hearing, a public report shall be drafted and agreed upon by a majority of the Hearing Panel or Commission (as appropriate). 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 Presiding Officer, shall be transmitted to the Respondent, Special Ethics Counsel, and Complainant, and shall be made available to the public. Both the Respondent and the Special Ethics

Counsel may, at the discretion and within such time designated by the Presiding Officer, 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 Procedures 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 Complaints Committee orders the Complaint dismissed; or
- (3) The Complaints Committee makes a finding of Probable Cause.

When (1), (2), or (3) occurs, 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 Parties.** The Confidentiality provided by this rule shall not prohibit the Commission or the Office of Ethics, Compliance and Oversight from advising the Respondent, Special Ethics Counsel, or 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 the Complainant, Respondent, Special Ethics Counsel or by any member or advisor of the Commission.

(b) **Time limitation.** Unless good cause is shown, all motions for disqualification shall be filed with the Office of Ethics, Compliance and Oversight at least ten days prior to the hearing at which the member is expected to participate. The motion shall be accompanied by a sworn affidavit stating the particular facts and reasons for disqualification.

(c) **Standard.** The motion shall be ruled on by the Commission member whose disqualification is sought (after consultation with the Office of General Counsel

liaison to the Commission) and, unless the motion is denied as untimely, the ruling shall be based on whether the motion and affidavit establish that (1) the Commission member is in fact not fair or impartial in the case or (2) a Florida Statute, Code provision, or other applicable law requires the Commission member's disqualification. In ruling on the motion to disqualify, the Commission member may consider the truth of the facts alleged in support of the motion.

- (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 Fla. Stat. § 112.3135(1)(d) or against any persons with whom the member does business within the meaning of Fla. Stat. § 112.313(3), or with whom the member has an employment or contractual relationship within the meaning of Fla. Stat. § 112.313(7).

Rule 15 – Ex Parte Communications.

- (a) **Ex Parte Communications Disfavored.** A Commission member who is not acting as Investigator or Special Ethics Counsel shall not initiate nor consider any Ex Parte Communication relative to the merits of a pending Complaint that would be required to be disclosed pursuant to Rule 15(b).
- (b) **Ex Parte Disclosure.** A Commission member shall disclose Ex Parte Communications received from any of the following: (1) A public employee or official engaged in prosecution (including the Special Ethics Counsel) 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) **Notice of Appointment.** Upon the Complaints Committee's appointment of a Special Ethics Counsel or an Investigator, the Office of Ethics, Compliance and Oversight shall provide written notice to all members of the Commission of the identity of the person(s) appointed to assist the Commission members with avoiding Ex Parte Communication.
- (d) **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 participant, 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 ten 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 Code provision has been violated based on Clear and Convincing Evidence.

Rule 17 – Dismissal of Violation; Resolution.

- (a) The Complaints Committee (prior to a finding of Probable Cause) or the Hearing Panel (after the Commission finds Probable Cause)—but not a Hearing Officer—may, at their discretion and at any stage within their respective processes:
 - (1) Dismiss a Complaint upon determining that the public interest would not be served by proceeding further; or
 - (2) 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
 - (3) Dismiss a Complaint in accordance with a request from the State Attorney, U.S. Attorney or other state or municipal agency; or
 - (4) 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; or
 - (5) Dismiss or suspend a Complaint if the more appropriate jurisdiction to investigate and process the Complaint is the Florida Commission on Ethics.
- (b) In the presiding division’s sole discretion, upon its own motion or the request of any participant, the presiding division may refer a decision to dismiss a Complaint under any of these Procedures to the full Commission for disposition rather than dismiss the Complaint within the division. When such a request is made by a participant and directed to the Complaints Committee, it shall have the same deadline as the Respondent’s response to the Special Ethics Counsel’s recommendation under Rule 11(b)(3). When such a request is made by a participant

and directed to the Hearing Panel, it shall be made prior to the Hearing Panel's vote to dismiss the Complaint.

- (c) Unless otherwise directed by the full Commission, if the presiding division refers a Complaint to the full Commission pursuant to Rule 17(b), and the full Commission refers the Complaint back to the presiding division for further proceedings without adopting the presiding division's recommended disposition (if any), such re-referral automatically shall be deemed to include an instruction to the presiding division not to dispose the Complaint within the division pursuant to the same Rule as previously rejected by the full Commission.