

RULES AND PROCEDURES



EL PASO COUNTY ETHICS COMMISSION

Adopted June 16, 2011

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I. PREAMBLE

A sworn complaint sets in motion a process that may include a preliminary review as well as informal or formal hearings. A sworn complaint may be resolved at several points in the process. The Commission may ultimately resolve a sworn complaint by dismissal or issuance of an order, up to and including imposition of a civil penalty. A Respondent may appeal a final decision of the Commission to a district court for a trial de novo. During most stages of the process the Commissioners and Commission Staff are required to keep the complaint confidential.

II. PROCEDURAL RULES FOR PRELIMINARY REVIEW PROCESS AND FORMAL HEARING

- A.** The Complainant is considered a witness to a preliminary review, preliminary review hearing, or formal hearing, but is not a party to the proceedings. Except when called as a witness, a Complainant has no right to participate in any proceedings.
- B.** The Respondent has the right to be represented by an attorney.
- C.** No person may be required to give evidence that violates the person's right against self-incrimination under the United States Constitution or Texas Constitution.
- D.** During the preliminary review process, a Respondent may request from the committee that information in the possession or control of the Complainant, including exculpatory information directly related to the complaint be provided to the Respondent and the committee.
- E.** No individual Commission member shall have any private or ex parte communications with any person regarding a pending complaint. However, a Standing Preliminary Review Committee may communicate with any person in furtherance of the preliminary review process.
- F.** The Commission shall notify the Complainant and Respondent on a quarterly basis until final disposition of a complaint, the status of the complaint.
- G.** The Commission or Respondents may request subpoenas pursuant to Local Government Code Section 161.170.

III.PRELIMINARY REVIEW PROCESS

A. During the Preliminary Review Process:

1. A sworn complaint shall be initially processed by a Standing Preliminary Review Committee consisting of two (2) members of the Ethics Commission and one (1) review officer selected by the Ethics Commission.
2. All three members of the Standing Preliminary Review Committee must be present to constitute a quorum.
3. If a member of the committee is unable to participate in the preliminary review process for a specific complaint, the next Commission member in the rotation for that seat shall serve as a substitute. In the case of the review officer being unable to participate, the alternate review officer will serve as the substitute.
4. Unanimous vote of all 3 members of the Standing Preliminary Review Committee is required to dismiss a complaint before the standing review committee when considering form compliance and jurisdiction. A majority vote of the committee in all other instances is sufficient for action.
5. The Standing Preliminary Review Committee has authority to extend any deadline not to exceed a total maximum of thirty (30) calendar days for action relating to its preliminary review of a sworn complaint.

B. Processing of Complaint:

No later than the 14th day after the date a complaint is filed, the Standing Preliminary Review Committee shall send one of the following three written notices to the Complainant and the Respondent:

1. If the Committee finds that it has jurisdiction, then the Written Notice shall include the following information:

- a) A statement confirming the complaint is in compliance with the form requirements;
- b) Whether the complaint will be processed as either a Category One Violation or Category Two Violation;
- c) The date by which the Respondent must respond to this Written Notice of a complaint;
- d) A copy of the complaint and the procedural rules of the Commission;
- e) A statement of the Respondent's rights;
- f) A request to the Respondent to provide any relevant information;
- g) A warning to the Respondent that a failure to respond timely to this Written Notice of a complaint shall be treated as a separate Category One violation.

2. Dismissal of Complaint: If the Committee does not find jurisdiction, then the Written Notice shall include a statement dismissing the complaint and the grounds for the dismissal.

3. If the Committee finds that the complaint form is not in compliance, then the Written Notice shall include the following information:

- a) A statement explaining how the complaint is not in compliance with the form requirements;
- b) A copy of the rules for filing sworn complaints;
- c) A statement informing the Complainant that if the complaint is not resubmitted by the 14th day after the date this notice was mailed, the complaint shall be dismissed and written notice of such shall be provided pursuant to Subsection B.(2.) of this article regarding dismissals of complaints.

4. Timely Resubmission by Complainant

a) If the complaint is resubmitted within the 14 day period, and the complaint form is in compliance, then the Written Notice shall be provided pursuant to subsection B. (1) of this section.

b) If the complaint is resubmitted within the 14 day period, and the complaint form remains non-compliant, then the complaint will be dismissed.

5. Complaint procedure for Sheriff's Office Employees:

a) For complaints that are under the provisions of a collective bargaining agreement, a Sheriff's civil service rule, or a rule of the Sheriff's department, the Commission through the Standing Preliminary Review Committee shall defer jurisdiction over the complaint to the Sheriff for disposition.

The Sheriff's Office:

(1) may return the complaint to the Committee for disposition if the Sheriff determines the conduct alleged in the complaint is not within the scope of the collective bargaining agreement, civil service rule, or Sheriff's Department rules; or

(2) may not return the complaint to the Committee for disposition if:

(a) The Sheriff disciplines the employee under the collective bargaining agreement, civil service rules, or the Sheriff's Department rules for the alleged conduct; or

(b) The Sheriff determines that the employee did not commit the conduct alleged in the complaint.

6. For all complaints that do not fall under the provisions of a collective bargaining agreement, a Sheriff's civil service rule, or a rule of the Sheriff's department, the Committee will follow the complaint procedures pursuant to this Code.

C. Respondent's Response

1. Category One Violation:

a) The Respondent has no more than 14 days from the date the Written Notice is received to respond to the complaint in writing. Failure to respond timely is a separate Category One Violation.

b) The response must include any objection to the Committee's exercise of jurisdiction, and the response may:

(1) acknowledge a violation or

(2) deny a violation.

Additionally, with either an acknowledgement or denial, the response may:

(1) include an explanation or supporting evidence;
and

(2) propose an agreement of assurance of voluntary compliance, which may include an agreement to cease and desist.

c) The committee shall review the response to determine if it adequately resolves the complaint and shall notify the Complainant and the Respondent regarding its findings. If the Respondent and Committee are unable to resolve the Category One Violation within 30 days from the date the Written Notice was received, the complaint shall be set for a preliminary review hearing.

2. Category Two Violation:

a) The Respondent has no more than 14 days from the date the Written Notice is received to respond to the complaint in writing. Failure to respond timely is a separate Category One Violation.

b) The response must include any objection to the Committee's exercise of jurisdiction, and the response may:

(1) acknowledge a violation; or

(2) deny a violation.

Additionally, with either an acknowledgement or denial, the response may:

(1) include an explanation or supporting evidence; or

(2) propose an agreement of assurance of voluntary

compliance, which may include an agreement to cease and desist.

c) The committee shall review the response to determine if it adequately resolves the complaint and shall notify the Complainant and the Respondent regarding its findings. If the Respondent and Committee are unable to resolve the Category Two Violation within 30 days from the date the Written Notice was received, the complaint shall be set for a preliminary review hearing.

IV. PRELIMINARY REVIEW HEARING AND RESOLUTION

A. Notice of Preliminary Review Hearing & Written Questions. The Standing Preliminary Review Committee shall provide Written Notice to the Complainant and the Respondent of the date, time, and place where the preliminary review hearing will be held. The Preliminary Review Hearing shall not be scheduled upon less than 72 hours notice to the Complainant and the Respondent. The notice may include written questions to either the Complainant and/or the Respondent to be answered under oath and the deadline by which they shall be returned. Prior to the preliminary review hearing the committee shall provide both the questions and answers submitted by the Complainant to the Respondent.

B. The committee shall review the answers provided in response to the written questions to determine if they resolve the complaint. If the committee finds that they resolve the complaint, they shall notify the Complainant and the Respondent regarding its findings and cancel the preliminary hearing.

C. Conduct of Preliminary Review Hearing. The only evidence that will be considered by the committee during the preliminary review hearing in its determination whether sufficient credible evidence exists that a violation has occurred will be the sworn complaint and sworn written answers to written questions, affidavits and other documentary evidence, and testimonial evidence presented by the Respondent, if any. All preliminary review hearings shall be recorded by the committee.

D. Preliminary Review Hearing Decision. After considering the evidence, the committee shall vote to issue one of the following decisions:

1. There is sufficient credible evidence that a violation within the jurisdiction of the code has occurred and whether the violation is technical or de minimis (of minimal importance);

2. That a violation of the code has not occurred and that the complaint shall be dismissed; or
3. There is insufficient credible evidence for the committee to determine whether a violation has occurred.

E. Procedure If Violation Has Occurred

1. If there is a determination that there is sufficient credible evidence that a violation occurred, the committee shall then attempt to resolve and settle the complaint. If the complaint is resolved, then the committee shall send a copy of the Preliminary Review Committee Order and the Notice and Terms of Resolution to the Complainant and Respondent by the 14th day following the final resolution.
2. If resolution is not possible, the committee shall order a formal hearing to be held before the Commission. By the 14th day following the order for formal hearing the committee shall send to the Complainant and Respondent the following:
 - a) copy of the order;
 - b) written notice of date, time, and location of formal hearing;
 - c) a statement of the alleged offense;
 - d) a description of the evidence of the alleged violation;
 - e) a copy of the complaint;
 - f) a copy of the Commission procedural rules;
 - g) a statement of the Respondent's rights.

F. Procedure If Violation Has Not Occurred

1. If the Standing Preliminary Review Committee determines that a violation of the code has not occurred, the committee shall dismiss the complaint, and send to the Complainant and the Respondent a copy of the determination, written notice of dismissal, and the grounds for dismissal.

G. Procedure If Insufficient Credible Evidence Determined

1. If it is determined that there is insufficient credible evidence to determine whether a violation has occurred, the committee shall send notice of such determination to the Complainant and Respondent no later than the 10th day following the committee's determination and the information as required in Section D, (2) (a – g).
2. The committee shall then refer the complaint to the Commission at its next meeting which is not yet posted to determine whether the complaint shall be dismissed based on lack of credible evidence or whether a formal hearing shall be held.

H. Preliminary Review Committee Hold Over

In the event the term of a preliminary review committee expires during the preliminary review process of any complaint, the committee shall holdover and shall complete the preliminary review process for all complaints pending before it.

V. FORMAL HEARINGS

A. Formal Hearing Process

Formal Hearings will be set for the next available regular Ethics Commission meeting that is at least 21 days after the date the determination of a need for a formal hearing is made.

When the Respondent requests a continuance, he shall file a written request with the Ethics Commission setting forth the grounds upon which such request is made. Except for good cause shown, any such motion shall be made not less than 7 days prior to the scheduled date of the hearing. If it is the first continuance of the hearing, the continuance shall be automatically granted and the Director of Human Resources is authorized to postpone the item until the next regularly scheduled Ethics Commission meeting.

The Chair will be responsible for the orderly conduct of the hearing.

1. Notice of Formal Hearing: Unless previously provided by the Standing Preliminary Review Committee, by the 10th day following the order for formal hearing the Commission shall send to the Complainant and Respondent the following:

- a) copy of the order;
- b) written notice of date, time, and location of formal hearing;
- c) a statement of the alleged offense;
- d) a description of the evidence of the alleged violation;
- e) a copy of the complaint;
- f) a copy of the Commission procedural rules;
- g) a statement of the Respondent's rights.

2. Information Provided to Respondent

No later than the 10th day prior to the date of the scheduled hearing the Commission shall provide to the Respondent:

- (a) a list of proposed witnesses;
- (b) copies of all documents to be introduced as exhibits; and
- (c) a brief statement regarding each witness' testimony to be given at a formal hearing.

3. Request for Witnesses from Respondent

No later than the 10th day prior to the date of the scheduled hearing the Respondent shall provide to the Commission a list of proposed witnesses with the names of the witnesses to be called, a summary of their expected testimony, and a copy of each document, record, or exhibit to be introduced at the hearing. The Respondent is responsible for notifying the witness(es) and requesting the presence of his own witness(es). If the Respondent is unable to secure the presence of his witness(es), he may file a request for a subpoena of witnesses at least 7 days prior to the hearing.

The chairperson has the authority for the issuance of a subpoena.

B. Formal Hearing Rules

When a complaint reaches the formal hearing stage through the Standing Preliminary Review Committee or by order of the Commission following referral by the Standing Preliminary Review Committee, the formal hearing shall be conducted under the following rules:

1. Six members of the Commission must be present for a formal hearing. A member of the Commission, who is not in attendance at the hearing, may not deliberate, vote, or participate in a matter concerning the complaint.
2. Unless overruled by majority vote of the Commission, the Commission Chair or his designee shall issue rulings on objections regarding:
 - a) admissibility of evidence;
 - b) discovery issues; and
 - c) irrelevant, immaterial, and unduly repetitious testimony.
3. The Texas Rules of Evidence as applied in a nonjury civil case in a district court shall apply including the exclusion of witnesses pursuant to Rule 614. However, evidence inadmissible under those rules may be admitted if the evidence is necessary to ascertain facts not reasonably susceptible of proof under those rules, not precluded by statute, and of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Objections to any evidence may be made and shall be noted in the record.
4. Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded by the Commission.
5. The Commission shall give effect to testimonial privileges recognized by Texas law.
6. All witnesses shall give their testimony under oath.
7. A Respondent may conduct cross-examination of any witness appearing before the Commission.
8. Discovery shall be as prescribed in the Texas Administrative Procedures Act, Title 10, Chapter 2001, Texas Government Code, Sections 2001.091-103.

9. The Commission shall determine by a preponderance of the evidence whether a violation within the jurisdiction of the Commission has occurred.

10. The Commission may deliberate in closed session, but must decide and render its ruling in an open meeting.

C. Formal Hearing Ruling

1. At the conclusion of a formal hearing or no later than the 40th day after the date of a formal hearing, the Commission shall issue: a written Order reporting the Commission's resolution of the formal hearing, including findings of fact and conclusions of law, and the imposition of a civil penalty, if any;

2. The Commission's written Order may include:

- a) a cease and desist order to stop a violation;
- b) an affirmative order requiring compliance with laws administered and enforced by the Commission;
- c) an order of public censure: and
- d) a civil penalty.

3. No later than the 14th day after the date the Commission issues an Order, the Commission shall:

- a) send a copy of the Order to the Complainant and Respondent; and
- b) make a copy of the Order available to the public during reasonable business hours.

4. Upon finding that a person has committed a violation within its jurisdiction that is not technical or de minimis, the Commission shall make available a copy of the Order on the Internet.

D. Formal Hearing Penalties and Sanctions

1. The Commission may impose the following Civil penalties:

a) Not more than \$4,000.00 for a violation of the Ethics Code.

b) Not more than \$500.00 for each delay in complying with a Commission Order;

2. The penalties imposed are in addition to other sanctions available to the Commission.

3. All penalties paid shall be deposited in the general fund of El Paso County.

4. The Commission may notify a regulatory or supervisory authority to include any agency, including the State Bar of Texas of a violation of the Code of Ethics.

E. Factors Applicable To the Assessment of Sanctions

The Commission shall consider the following factors in assessing a sanction:

1. the seriousness of the violation including the nature, circumstances, consequences, extent and gravity of the violation;

2. any previous history of violations by the Respondent;

3. Respondent's good faith efforts to rectify the consequences of the violation;

4. the appropriateness of a penalty to deter future violations; and

5. any other information that justice may require.

F. Reconsideration of Sanctions

1. A Respondent who has had a civil penalty imposed upon him may request to appear before the Commission and submit an affidavit to the Commission stating the reason(s) why the person is seeking a waiver or reduction of a civil penalty.

2. After hearing the waiver or reduction request, the Commission may affirm, reduce, or waive the penalty.

G. Collections

The El Paso County Attorney may collect a fine or other penalties imposed by the Commission.

VI. APPEALS

A. An appeal may be taken by a Respondent by filing a petition in a state district court in El Paso County within thirty (30) days after the issuance of an order in a formal hearing.

B. The legal action in the district court shall be a *trial de novo*.

C. The Respondent is entitled to demand a jury trial.

D. If the Respondent is a county employee and the judgment of the district court is favorable to the county employee, the district court may order reinstatement of the county employee, payment of back-pay, or other relief if appropriate, to include reimbursement of court costs and attorney's fees.

E. The Commission shall file with the clerk of the district court the original or a certified copy of the entire record of the ethics complaint proceedings, once the Commission has been served with the petition filed by the Respondent in a district court.

F. The Commission may require the Respondent to pay one-half (1/2) of the cost of preparation of the original or a certified copy of the record required to be sent to the district court. The cost paid by the party filing the petition (petitioner) is a court cost to be assessed by the district court.

VII. RECORDKEEPING:

A. The Commission shall keep an information file regarding each sworn complaint or other complaint filed with the Commission which shall include the following information:

1. Name of Complainant;
2. Date of receipt of complaint by the Commission;
3. The subject matter of the complaint;
4. The name of each person contacted in relation to the complaint;

5. A summary of the results of the review or investigation of the complaint; and
6. An explanation regarding the reason for the closure of a file, if the Commission closed the file without taking action other than the investigation of the complaint.

B. Records Retention

1. Records of the Commission will be kept in accordance with the law, and are generally kept for three years following the last action in each matter.