

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 and Referrals 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 and Referrals regardless of date of filing.
- (b) **Jurisdiction.** The Commission shall have jurisdiction as stated in 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 and Referrals Committee means a division of the Commission vested with the jurisdiction to receive Complaints and Referrals, appoint Investigators and Special Ethics Counsel(s), dismiss Complaints and Referrals, recommend a finding of Probable Cause to the full Commission, submit a Complaint or Referral 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 and Referrals Committee shall be comprised of no less than three members of the Commission. Decisions within the authority vested in the Complaints and Referrals 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 and Referrals in Executive Session and to hold documents relating to Complaints and Referrals 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 a Complaint initiated by the receipt of a written Complaint form that is signed by a Complainant under oath, is based upon personal knowledge or information other than hearsay, and is otherwise compliant with Rule 5(b).

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 13. 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 and Referrals 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 10(f) to conduct proceedings and issue reports and recommendations on matters referred by the Hearing Panel relative to a Complaint or Referral. 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 or Referral 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 or Referrals 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 Referrals, 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 or Referral for which they are appointed to serve on the Hearing Panel was discussed, unless the Executive Session(s) concerned referrals from the Complaints and Referrals Committee pursuant to Rules 9(b)(5) or 15(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.

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, 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 or Referral.

Legal Sufficiency refers to Complaints and Referrals that are deemed legally sufficient if the Complainant or Referral sufficiently alleges facts which, if true, would constitute a violation of the Code.

Personal knowledge or information other than hearsay means information that is reliable, is not hearsay or is either admissible or likely to be admissible under Florida Statutes section 90.801-90.805, such as an admission(s) by the Respondent, government records, reports by government agencies, and business records.

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.

Referral means a Referral initiated by the receipt of a written referral of a possible violation of the Code from the Council Auditor, Employee Services, the Office of Inspector General or the State Attorney's Office for the Fourth Judicial Circuit.

Respondent means the individual(s) who is the subject of the Complaint or Referral.

Special Ethics Counsel means the individual appointed by the Complaints and Referrals Committee to conduct appropriate investigation, gather and present evidence before the Commission (or any division thereof) with respect to a Complaint or Referral, and otherwise advise the Complaints and Referrals Committee in connection with the prosecution of a Complaint or Referral. Any individual as set forth in Rule 8 may serve as Special Ethics Counsel.

- (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 or Referral 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 or Referral alleging prevention of discovery of a violation must allege specific facts supporting that conclusion. A Complaint or Referral 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 and Referrals 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 and Referrals 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 and Referrals 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 or Referral of Violation of the Code.

- (a) **Safeguarding Confidential Materials.** Upon receipt of a Complaint or Referral, the Office of Ethics, Compliance and Oversight shall print on the face thereof the date on which the Complaint or Referral was received in the Office of Ethics, Compliance and Oversight. Each Complaint or Referral received shall be assigned a control number which shall be entered on the Complaint or Referral itself and on a folder marked confidential in which the Complaint or Referral shall be filed so long as it remains Confidential. Any document related to the Complaint or Referral shall be filed in the Complaint file.
- (b) **Technical and Clerical Review for a Complaint.** Upon receipt of a Complaint, the Ethics Director shall review the Complaint to ensure that the proper Complaint form has been used, that all the information required has been provided, that only one Respondent has been named in each Complaint form submitted, and that the

Complaint has been properly signed by the Complainant under oath. One or more persons may sign a Complaint under oath; however, when the Complaint is to be filed under oath in a representative capacity on behalf of an incorporated association or group, the Complaint shall include sufficient information to indicate the authority of the person signing the Complaint to file such a 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 Complaint lacks any of the foregoing or is otherwise incomplete, a copy of the 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 Complaint or Referral to Respondent.** Except as provided otherwise herein, a copy of the original Complaint or Referral shall be transmitted to the Respondent in a method requested by the Respondent, including but not limited to email, regular mail or by hand delivery, by the Office of Ethics, Compliance and Oversight within ten days of its receipt. Subsequent sworn amendments to the Complaint shall be transmitted to the Respondent within ten days of their receipt in the delivery method that was used for the Complaint or Referral. . If the Respondent does not request a specific method of delivery or the Office of Ethics, Compliance and Oversight is not able to confirm the delivery method with Respondent within the required timeframe, the Office of Ethics, Compliance and Oversight may select a delivery method that provides the most expedient notification or is most practical under the circumstances, as determined by the Ethics Director. The Ethics Director shall transmit the Complaint or Referral 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 and Referrals Committee, to delay service of the Complaint or Referral in any matter where service of the Complaint or Referral 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 and Referrals Committee, inform the Complaints and Referrals Committee of the decision to delay service. The Complaints and Referrals 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 or Referrals pursuant to Rule 15, by filing those submissions with the Office of Ethics, Compliance and Oversight.
- (f) **Complaints and Referrals Within 60 Days of Election Returned.** Any Complaint or Referral against a candidate in a general, special, or primary election that is received within the sixty 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 or agency submitting the Referral, with an explanation of why the Complaint or Referral is being returned and without any action being taken by the Commission. A Complaint or Referral returned pursuant to this provision and subsequently refiled or resubmitted after the election shall be deemed to have been filed or submitted on the date the Complaint or Referral was first submitted to the Office of Ethics, Compliance and Oversight. Additionally, nor may any intention of filing such a Complaint or submitting such a Referral be disclosed on the day of any such election or within sixty days immediately preceding the date of the election.
- (g) **Probable Cause Determination.** Complaints or Referrals that are not otherwise disposed of, shall then proceed to subsequent investigation pursuant to these Procedures and, if applicable, consideration by the Complaints and Referrals Committee and Commission to determine whether Probable Cause exists that a violation of the Code occurred, in accordance with Rule 9.
- (h) **Consolidation of Complaints and/or Referrals Before the Complaints and Referrals Committee.** When Complaints and/or Referrals against multiple individuals involving a common question of law or fact are simultaneously pending before the Complaints and Referrals Committee, the Complaints and Referrals Committee may order the Complaints and/or Referrals consolidated. Before ordering consolidation, the Complaints and Referrals Committee shall consider whether each Complaint and/or Referral will be separately resolved or referred to the Hearing Panel simultaneously to avoid conflicts with public records laws if one Complaint or Referral is resolved before a consolidated Complaint or Referral. The Complaints and Referrals Committee may not order consolidation of individual issues, only full consolidation. The Complaints and Referrals 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, Referrals or Issues Before Hearing Panel or Hearing Officer.** When Complaints and/or Referrals 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 and/or Referrals, may order all the Complaints and/or Referrals consolidated, and/or may issue such orders concerning Complaints and/or Referrals 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 and Referrals.

- (a) **Review for Legal Sufficiency and/or Jurisdiction.** After the Complaint or Referral has been received, the Complaint or Referral shall be reviewed by the Ethics Director in order to determine whether the Commission has jurisdiction over the Complaint or Referral; that is, whether the Complaint or Referral is one concerning a violation of the Code that occurred within the statute of limitations (Section 602.939) and for Complaints only, whether the Complaint is based upon personal knowledge or information other than hearsay.

If the facts in the Complaint (1) fail to allege a violation of the Code, (2) allege a violation of only state 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 and Referrals Committee and the approval of its Chair, return the Complaint to the Complainant with notice pursuant to Rule 6(b). If the Ethics Director, with approval of the Chair of the Complaints and Referrals Committee, returns a Complaint under this subsection (a), service to the Respondent as outlined in Rule 5(d) above is not required; however, the Ethics Director shall inform the Complaints and Referrals Committee of the decision to return the Complaint. 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 based upon personal knowledge or information other than hearsay which, liberally construed and if true, would constitute a violation of the Code. For an allegation to be deemed legally sufficient, each element of the Code to be investigated, except elements pertaining to mental state, intent, or knowledge of an individual, must be supported by information in the Complaint that is based on personal knowledge of the Complainant or information other than hearsay. A determination that a particular allegation in a Complaint is legally sufficient may be made even when other allegations in the

Complaint are determined not to be based upon personal knowledge or information other than hearsay. If the facts in the Complaint do not appear to be or are not based upon personal knowledge or information other than hearsay, the Ethics Director shall make a recommendation to the Complaints and Referrals Committee pursuant to Rule 6(e) that the Committee find the Complaint to be insufficient and dismiss the Complaint.

If the Referral (1) fails to allege a violation of the Code, (2) alleges a violation of only state ethics laws, or (3) a violation of the Code that occurred wholly outside the statute of limitations, the Ethics Director will present the Referral to the Complaints and Referrals Committee under Rule 6(e).

The Ethics Director may request additional information from the Complainant or agency submitting the Complaint or Referral, consult with the Office of General Counsel liaison to the Commission, and obtain information from public records or otherwise in order to determine the legal sufficiency of the Complaint or Referral.

(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 12-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 and Referrals 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 and Referrals Committee at an Executive Session, at which the Complaints and Referrals Committee shall decide, by majority vote, whether to affirm or reverse the decision to return the Complaint. The Complaints and Referrals 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 or Referral is sufficient to invoke the jurisdiction of the Commission, the Ethics Director shall, after consultation with and permission of the Chair of the Complaints and Referrals Committee or, if he or she is unavailable, the Vice-Chair, (1) commence a preliminary investigation of the Complaint or Referral, (2) refer the Complaint or Referral to any other agency whose jurisdiction or purview is appropriate, or (3) prepare the Complaint or Referral for Complaints and Referrals Committee consideration. The Chair of the Complaints and Referrals Committee may schedule an Executive Session of the Complaints and Referrals Committee, as appropriate. In the event of a referral to another agency, pursuant to Code § 602.938, the Complaints and Referrals 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 or Referral shall be brought before the Complaints and Referrals 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 and Referrals Committee may find the Complaint or Referral to be sufficient and order an investigation; may find the Complaint or Referral to be insufficient and dismiss it; or may take such other action as may be appropriate. In any case where a Complaint or Referral is found legally insufficient and dismissed by the Complaints and Referrals Committee, the Committee shall notify the Complainant that submitted the Complaint or agency that submitted the Referral, as applicable, and the Respondent(s) that no investigation of the Complaint or Referral will be made. Following dismissal, a summary of the reasons for dismissing the Complaint or Referral together with the Complaint or Referral 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 and Referral Committee shall stay consideration of a Complaint or Referral 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 and Referrals.

After a Complaint or Referral has been determined to be sufficient to invoke the jurisdiction of the Commission, the Commission may permit the Complaint or Referral to be withdrawn by the Complainant(s) or the agency that submitted the Referral, as applicable. Prior to a finding of Probable Cause, this authority is vested in the Complaints and Referrals Committee. After a finding of Probable Cause, this authority is vested in the Hearing Panel. Withdrawal shall be requested in writing and shall be signed by the Complainant(s) or agency that submitted the Referral and sworn before a notary public, stating the facts and circumstances constituting good cause for withdrawal of the Complaint or Referral. 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 or Referral to allege a violation of the Code, the stage in disposition of the Complaint or Referral at the time the request was received, whether the Complaint or Referral should proceed in the judgment of the relevant division of the Commission despite the Complainant's or agency that submitted the Referral's wishes, the reasons given by the Complainant(s) or agency that submitted the Referral for wishing to withdraw the Complaint or Referral, and any other considerations important to the Commission. If withdrawal is permitted, the relevant division of the Commission shall order the Complaint or Referral dismissed and shall proceed as if the Complaint or Referral had been found insufficient under Rule 6(e).

Rule 8 – Investigations

- (a) **Investigations.** At the discretion of the Chair of the Complaints and Referrals 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, by the Inspector General, by one or more members of the Complaints and Referrals 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 and Referrals Committee at the time of the Probable Cause finding for the particular Complaint or Referral for which the Investigator is appointed or on the Hearing Panel for that Complaint or Referral. The Complaints and Referrals Committee may appoint or authorize the Investigator to appoint

Assistant Investigators, and once confirmed by the Complaints and Referrals Committee, shall have the same authority as the Investigator unless limited by the Complaints and Referrals Committee or by the Investigator.

- (b) **Scope of Investigation.** Investigations shall be limited to the allegations of the Complaint or Referral but shall include an investigation of all facts and persons related to the Complaint or Referral.
- (c) **Evidence Unrelated to the Complaint or Referral.** If, during the course of an investigation, the Investigator discovers evidence of a wrongful act not materially related to the Complaint or Referral 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 and Referrals 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 and Referrals Committee. Upon receipt of a separate Investigator's report containing such evidence or facts, the Complaints and Referrals Committee shall as soon as practicable forward evidence of the commission of a crime or other wrongful act to the appropriate disciplinary or law enforcement official. If such official or if the Investigator 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. Investigator's reports pursuant to Rule 8(c) shall be maintained as part of the Confidential file.
- (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 or Referral, 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 or Referral, 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 and Referrals Committee and shall immediately discontinue working on the investigation. If the Complaints and Referrals Committee feels that the Investigator cannot be unbiased or impartial at any point in time during the preliminary investigation, the Complaints and Referrals Committee shall terminate any further investigation by the Investigator. The Complaints and Referrals 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 and Referrals 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 and Referrals 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 and Referrals 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 and Referrals 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 and Referrals Committee may appoint or authorize the Special Ethics Counsel to appoint Assistant Special Ethics Counsel(s), and once confirmed by the Complaint and Referrals Committee, shall have the same authority as the Special Ethics Counsel unless limited by the Complaints and Referrals 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 and Referrals Committee, provided such person(s) meets the qualifications for both roles under these Procedures.

Rule 9 – Procedure Leading to Probable Cause

- (a) **Commission to Vote.** Unless a Complaint or Referral is otherwise resolved by the Complaints and Referrals 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 or Referral. 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 15.

(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 and Referrals Committee for the disposition of the Complaint or Referral. 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 and Referrals 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 and Referrals Committee may (A) continue its determination to allow further investigation; (B) issue a written order dismissing the Complaint or Referral 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 or Referral 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 or Referral, consistent with due process of law.

(5) Probable Cause Hearing. If the Complaints and Referrals Committee refers the Complaint or Referral to the full Commission to determine Probable Cause, the Commission shall consider the Complaint or Referral 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 or Referral and the conclusion of all proceedings before the Complaints and Referrals 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 or Referral 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 or Referral for a final, public hearing before the Hearing Panel pursuant to Rule 9(c); or (D) take such other action as it deems necessary to resolve the Complaint or Referral, 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 or Referral, 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 10 – 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 or Referral, 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 or Referral 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 or Referral, 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 or Referral, it shall issue a written decision ordering the dismissal of the Complaint or Referral 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 10(b). A motion under Rule 10(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 or Referral, 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 or Referral. 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 12, except that a Hearing Officer does not have authority to consider resolutions pursuant to Rule 15.

(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 or Referral is referred to a Hearing Officer to handle the Public Hearing and recommend a final disposition of the Complaint or Referral, 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 or Referral 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 15(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 10(f)(2). The Commission shall review the Hearing Panel's report the same way it would a Hearing Officer's report under Rule 10(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 11 – Confidentiality

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

- (1) Confidentiality is waived in writing by the Respondent; or
- (2) The Complaints and Referrals Committee orders the Complaint or Referral dismissed; or
- (3) The Complaints and Referrals Committee makes a finding of Probable Cause.

When (1), (2), or (3) occurs, all materials relating to the Complaint or Referral 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 or Referral proceeding.

Rule 12 – 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 or Referral 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 13 – 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 or Referral that would be required to be disclosed pursuant to Rule 13(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 and Referrals 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 14 – 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 15 – Dismissal of Violation; Resolution.

- (a) The Complaints and Referrals 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 or Referral upon determining that the public interest would not be served by proceeding further; or
 - (2) Dismiss a Complaint or Referral and issue a letter of instruction to the Respondent; 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 or Referral if the more appropriate jurisdiction to investigate and process the Complaint or Referral is the Florida Commission on Ethics.

If the Complaints and Referrals Committee or the Commission dismisses a Complaint or Referral under subsections (1) or (2) above, the Commission shall issue a public report stating with particularity its reasons for the dismissal per section 602.934 of the Code. The Ethics Director shall notify the Complainant that submitted the Complaint or the agency that submitted the referral and the Respondent that no investigation or additional action will be taken by the Commission based on the reasons as applicable.

- (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 or Referral under any of these Procedures to the full Commission for disposition rather than dismiss the Complaint or Referral within the division. When such a

request is made by a participant and directed to the Complaints and Referrals Committee, it shall have the same deadline as the Respondent's response to the Special Ethics Counsel's recommendation under Rule 9(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 or Referral to the full Commission pursuant to Rule 15(b), and the full Commission refers the Complaint or Referral 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 or Referral within the division pursuant to the same Rule as previously rejected by the full Commission.