



BOARD OF ETHICS

**POLICY FOR COMPLAINT
PROCEDURES**

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Board of Ethics
Policy for Complaint Procedures

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Section I. DEFINITIONS.

As used in this Policy:

“The Board” shall mean the Board of Ethics as defined in the Bowling Green Code of Ordinances, Chapter 25 (Code of Ethics).

“Code of Ethics” shall refer to the regulations as established in the Bowling Green Code of Ordinances, Chapter 25 (Code of Ethics).

“Complainant” shall mean the person tendering the complaint.

“Counsel” shall mean the City Attorney and/or Special Counsel.

“Investigation Report” shall mean the report submitted by Counsel.

“Mitigating Circumstances” shall mean any circumstances the Board may deem to lessen the severity of the punishment deemed appropriate after the Board has determined that a violation of the Code of Ethics has occurred. These circumstances include, but are not limited to, the lack of economic advantage or gain by the target, lack of economic loss to the City and its taxpayers, lack of significant impact on public confidence in City Government or similar matters.

“Settlement Agreement” shall mean any agreement reached by the Board of Ethics and the target of a complaint that resolves the issues raised in the complaint.

“Special Counsel” shall mean counsel for the Board of Ethics other than the City Attorney, as retained by the Board.

“Target of the complaint” or “target” shall mean the person against whom a complaint has been filed.

“Violator” shall mean the person found by the Board of Ethics to have violated the Code of Ethics.

Section II. GENERAL PROVISIONS.

a. Method of actions under this Policy: Actions taken by the Board under this Policy shall be by majority vote of those constituting a quorum of the Board. Three (3) members of the Board shall constitute a quorum.

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b. Cooperation with other authorities: The Board may turn over any information gathered in the investigation of a complaint to other public authorities, such as the City Manager, the Warren County Attorney, Commonwealth Attorney for Warren County or the United States Attorney for the Western District of Kentucky.

c. Criminal Investigations: An unresolved criminal investigation or prosecution of an individual or individuals relating to matter(s) before the Board shall toll or postpone the time required herein for the Board to act.

d. Special Counsel for the Board: The Board may employ the services of Special Counsel which may consist of one or more attorneys to be called upon pursuant to the terms in this Policy.

Section III. TENDERING COMPLAINT.

a. Any person may tender a complaint in writing to the Office of City Clerk.

b. The written complaint shall set out in plain, clear and concise language the behavior which the complainant believes to constitute a violation of the Code of Ethics. The complaint need not but may cite the section or sections of the Code of Ethics which the complainant believes to have been violated. To the extent possible, the written complaint should contain the names and addresses of any persons with personal knowledge of the facts alleged and documents or other evidentiary materials.

c. Oral or anonymous complaints may be submitted to the Board. However, no investigation is required for such complaints.

Section IV. NOTIFICATIONS BY OFFICE OF CITY CLERK.

Upon receipt of a complaint by the Office of City Clerk:

a. The Office of City Clerk shall notify the target in writing that he is the target of a complaint tendered to the Board and provide the target with a copy of the complaint, all supporting documentation and a copy of this Policy.

b. In the event that the target is a City Commissioner or the Mayor, the City Clerk shall forward a copy of the complaint to the remaining Board of Commissioners. In the event that the target is a City employee, the City Clerk shall forward a copy of the complaint to the City Manager.

c. The Office of City Clerk shall notify the Board that a complaint has been tendered and forward a copy of the complaint to the Board.

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Section V. INVESTIGATIONS.

a. The target of the complaint may respond to the complaint by submitting a written response to the Board to the allegations along with other documents he feels are relevant. Any written response shall be submitted within twenty (20) business days after the complaint was forwarded to the target.

b. The Board shall make a preliminary evaluation of the complaint and any response provided by the target to determine if the complaint appears to be frivolous or filed principally for the purpose of harassment on its face, is too indefinite, does not identify the alleged violator, identifies a person no longer subject to the Code of Ethics, alleges actions outside the applicable statute of limitations, or alleges facts that have already been resolved by the City or the Board. The Board shall dismiss without a hearing any complaint meeting any of the above criteria.

c. If the Board determines that the complaint warrants investigation and the target is the Mayor, a member of the Board of Commissioners, the City Manager or a member of the City's senior staff the City Attorney shall have a conflict of interest. The Board may retain the services of Special Counsel who shall investigate the matter and report its findings in writing to the Board as soon as practicable, but no later than sixty (60) days from the date of the execution of an agreement with Special Counsel.

d. If the Board determines that the complaint warrants investigation and the target is a person other than a member of the Board of Commissioners, the Mayor, the City Manager or a member of the City's senior staff, the complaint shall be forwarded to the City Attorney in writing, who may investigate the matter and report his findings in writing to the Board as soon as practicable, but no later than sixty (60) days from the date of the Boards written notice to the City Attorney.

e. In the event the City Attorney has a conflict of interest in any matter under this Policy, the City Attorney shall so notify the Board, and the Board shall retain the services of a Special Counsel.

Section VI. AUTHORITY AND DUTIES OF COUNSEL.

a. Counsel shall have the authority to hire such investigative help as Counsel deems reasonably necessary subject to the terms of the contract between Counsel and the Board.

b. Counsel shall have the authority to conduct interviews with the complainant, the target, and persons having any knowledge or information relating to the allegations of violation. A summary of the interviews will be included in the written report prepared by Counsel for review by the Board.

c. Counsel shall, if the evidence warrants, prepare an investigation report of the complaint. If the investigation report concludes that a violation has occurred, Counsel shall state in the report the section or sections of the Code of Ethics which have been violated.

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d. Counsel shall furnish each member of the Board with a copy of the written report and a copy of the original complaint tendered. If the written analysis concludes that a violation did not occur, Counsel shall inform the Board and tender the evidence gathered during the investigation.

e. If upon investigation, Counsel believes that the evidence warrants the preparation of a new complaint, Counsel shall prepare and furnish the Board a copy of the proposed new complaint.

Section VII. RECUSAL OF BOARD MEMBERS.

a. At any time after a complaint has been filed, a Board member shall recuse from participating in the matter if:

1. The Board member believes it is in the interest of justice to withdraw from consideration of the matter;

2. The Board member has a conflict of interest;

3. The Board member has taken a position on the merits of the matter prior to its consideration by the Board; or,

4. The Board member believes there are specific facts from which a reasonable person could believe that the Board member would not reach a decision in the matter solely on its merits.

b. If recusal or other reasons prevent the Board from having a full five member composition for the hearing, the City Clerk shall select, by random drawing, an alternate member or members from three persons so appointed pursuant to the Code of Ethics, Subchapter 25-13. The selected person or persons shall immediately cease to serve as an active member or members of the Board at the conclusion of the hearing for which they have been selected.

Section VIII. DETERMINATION BY BOARD UPON INVESTIGATION REPORT.

The Board at its next stated meeting after the receipt of the investigation report from Counsel may:

a. Accept or reject the investigation report and/or any new complaint;

b. Refer the matter to Counsel for further investigation;

c. Dismiss the complaint and notify the target and the complainant;

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d. Order the investigation report filed, and have Counsel or Counsel's designee hand deliver to the target a copy of the investigation report and/or any new complaint; or,

e. Postpone any further action pending the final resolution of criminal investigation(s) or prosecution(s) in to the matter(s) before the Board.

Section IX. RESPONSE TO INVESTIGATION REPORT AND NEW COMPLAINT.

The target may file a response to the investigation report, or report and/or new complaint, if applicable. In the event that the target does not file a response within twenty (20) days, all allegations contained in the investigation report and/or new complaint, if applicable, are deemed to be admitted. This admission may be considered by the Board in making its recommendation.

Section X. PRE-HEARING CONFERENCE.

Counsel for the Board shall schedule a pre-hearing conference after the twenty (20) day response period. Counsel for the Board and the target shall meet for the pre-hearing conference at an agreed time and place. The target may be represented by counsel.

a. The purpose of the pre-hearing Conference shall be:

1. To determine whether a settlement of the matter, subject to the approval of the Board, can be reached.

2. To narrow the issues that will be presented to the Board and to stipulate all facts which are not in controversy.

3. To present and exchange all documents, statements and exhibits which either party intends to introduce at the hearing.

4. To label all exhibits to be introduced at the hearing on the matter for identification.

5. To determine the existence of questions concerning the admissibility of evidence sought to be introduced at the hearing on the matter.

6. To exchange a list of witnesses to be called at the hearing on the matter.

b. Counsel for the Board shall, on the same date and within ten (10) days of the conference, provide a written report of the results of the pre-hearing conference to the members of the Board, the target and the target's counsel, if any.

c. The target or target's counsel may file exceptions with the Board within seven (7) days of the date the written report was provided to the Board members.

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Section XI. ACTION BY BOARD UPON REPORT OF PRE-HEARING CONFERENCE.

The Board at its next stated meeting upon receipt of the report of the results of the pre-hearing conference shall:

a. If exceptions are filed, immediately dispose of them prior to proceeding further with the report of the pre-hearing conference.

b. After exceptions filed with the Board have been resolved or if no exceptions are filed, the Board shall either:

1. Accept or reject any proposed settlement of the matter; or,

2. Set the matter for a hearing, and have Counsel or Counsel's designee hand deliver to the target and target's Counsel, if any, a notice containing the stated time and place of the hearing.

Section XII. HEARING OF THE BOARD.

a. The hearing shall be open to the public.

b. The Board shall prohibit the introduction of documents, statements and exhibits at the hearing if it was not provided to the other side at the pre-hearing conference, unless its existence was not known and could not have been discovered at that time by the use of due diligence.

c. All testimony shall be taken under oath and preserved in a manner chosen by the Board.

d. At any time during the hearing prior to the Board's final decision, the parties may reach an agreement resolving the alleged ethical violations. This agreement shall be subject to approval by the Board.

e. The hearing shall proceed as follows:

1. Opening Statements:

a) The Counsel for the Board shall give a statement limited to fifteen (15) minutes, of the facts and evidence believed to constitute a violation of the Code of Ethics.

b) The target or counsel for the target may give a statement limited to fifteen (15) minutes, of the facts and evidence believed to demonstrate that a violation of the Code of Ethics did not occur.

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2. Counsel for the Board shall present the evidence relied upon to show a violation of the Code of Ethics.

3. Upon completion of the presentation of the evidence by Counsel for the Board, the Board may dispose of the matter by dismissing the complaint.

4. If the matter is not disposed of by the Board, the target or target's counsel may present his defense to show a violation of the Code of Ethics did not occur.

5. Upon the completion of the presentation of all of the evidence, the Board may vote to convene in closed session pursuant to Kentucky Revised Statutes for the purpose of deliberations of individual adjudications.

6. If the person alleged to have violated the Code of Ethics refuses, based on the right against self-incrimination or any other basis, to file a response or to testify at a hearing, the Board may proceed with its consideration and/or hearing.

Section XIV. DISPOSITION.

a. Within thirty (30) days following the hearing, the Board shall convene in an open meeting to determine its findings by a majority vote of the quorum present to either:

1. Dismiss the complaint; or,

2. Determine that a violation of the Code of Ethics did occur, and considering any mitigating circumstances, issue penalties authorized by Chapter 25 (Code of Ethics) of the City of Bowling Green Code of Ordinances.

b. The Board and/or Counsel shall prepare a written report of its findings and conclusions for the record.