

# AMENDMENTS TO LEGISLATIVE ETHICS BOARD RULE 1

Adopted by the Board on 8/26/2019

## BOARD RULES

### Rule Number 1: Procedures

#### **A. Meetings**

A quorum for transaction of board business shall consist of at least a majority of the members, which shall include not less than a majority of the citizen members.

#### **B. Filing of Complaints**

(1) The board shall ~~((decide))~~ resolve complaints alleging violations of chapter 42.52 RCW ~~((and rules adopted under it))~~ in accordance with these rules. Complaints may be filed by any person, personally, or by his or her attorney, or the board. Complaints must be written, on a form prescribed by the board, signed under oath by the complainant or his or her attorney, and directed to the board. A copy of the complaint shall be provided to the respondent by the ~~((board))~~ staff.

(2) Upon receipt, complaints shall be assigned a reference number. The board shall maintain and keep current for public inspection a status sheet which shall contain with respect to each complaint: Its reference number, the date received by the board, and its present status, including the date of any hearings scheduled. The name of the complainant and the person charged shall be entered on the status sheet following the determination of reasonable cause provided for in section ~~((D))~~ F. of this rule.

#### **C. Investigation of Complaints**

(1) Each investigation shall be limited to the alleged facts contained in the complaint.

(2) On each complaint, the staff shall first conduct a jurisdiction investigation for the purpose of determining whether the board has personal and subject-matter jurisdiction. If the staff concludes that the complaint is within the jurisdiction of the board, the staff shall commence an investigation of the allegations. If the staff concludes that the complaint is not within such jurisdiction, the staff shall end the investigation and ~~((shall provide the board with the investigative report as required in paragraph (4) of this section))~~ dismiss the complaint subject to section D. of this rule.

(3) If the complaint alleges a violation of RCW 42.52.180 by a legislator, the board may provide the complaint to the attorney general for investigation of such allegation by the attorney general. For purpose of such investigation, the attorney general shall serve as the board's staff.

(4) The results of each investigation shall be reduced to writing and included in an investigative report which shall be provided to the board for the purpose of making a determination under section ~~((D))~~ F. of this rule. If the board desires more information, it may require the staff to investigate further. The results of such additional investigation shall also be reduced to writing and included in an investigative report.

#### **D. Staff Dismissal of Complaints**

(1) Subject to subsection (D)(2) of this rule, the staff may dismiss the complaint for the following reasons:

(a) The alleged violation is not within the personal or subject matter jurisdiction of the board;

(b) The complaint is unfounded or frivolous; or

(c) The complaint presents a violation of chapter 42.52.RCW, but any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and after consideration of all the circumstances, further proceedings would not serve the purposes of chapter 42.52 RCW.

(2) The staff shall provide notice by electronic mail to each board member of its intent to dismiss the complaint. If any board member objects to the staff's dismissal within ten (10) calendar days after staff has sent the notice, the complaint will be deliberated at the next regularly scheduled meeting of the board.

(3) If a timely objection to the staff's dismissal is not received from any board member, a copy of the staff's order of dismissal will be provided to the complainant and the respondent along with a statement of the complainant's right to request review by the board of the staff's dismissal.

#### **E. Review of Staff Dismissal Order**

(1) The complainant may request review of the staff's dismissal of the complaint. The request must be in writing and received by the staff within 30 calendar days after the date upon which the order of dismissal is mailed to the complainant.

(2) When a request for review is received, staff will prepare a record for board review and notify the respondent that a review has been requested. The record will consist of the following items:

(a) The complaint;

(b) The investigation report;

(c) The order of dismissal;

(d) The complainant's request for review;

(e) Staff's response to the request for review; and

(f) Any additional material requested by the board chair or the chair's designee.

(3) At the next available opportunity, the board will review the record and deliberate in closed session, without oral argument, and act upon the review request by:

(a) Affirming the dismissal;

(b) Directing the staff to conduct further investigation; or

(c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(4) In reviewing the staff's order of dismissal, the board will decide the matter de novo.

(5) The board's decision will be in writing, provided to the complainant and respondent and published on the legislative ethics board website.

**(D) F. Determination of Reasonable Cause**

- (1) The board shall review the results of the investigation and shall determine whether the complaint is within its jurisdiction and, if so, whether there is reasonable cause to believe that a violation has occurred.
- (2) If the board determines that the complaint is not within its jurisdiction or that there is not such reasonable cause, it shall issue an order dismissing the complaint, and shall notify the complainant, the respondent, and news media and others who have requested notice of the board's actions with a copy of the complaint and the board's reasons for dismissal.
- (3) If the board determines that the complaint is within its jurisdiction and that there is such reasonable cause, the board shall conduct or provide for conducting a public hearing on the complaint.

**(E) G. Notice of Hearing and Respondent's Answer**

- (1) The board shall provide notice of the public hearing to the complainant, the respondent, and news media and others who have requested notice of the board's actions.
- (2) The notice shall include the board's determination of reasonable cause, as well as the date, time and place for the hearing. The notice shall provide that the respondent shall be entitled to appear in person or otherwise, with or without counsel, submit testimony, be fully heard, and cross-examine witnesses. The notice shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty for the alleged violation may be greater than \$500.
- (3) The respondent shall be notified of the date of the hearing no later than forty-five days before the hearing date. At the request of the respondent, the board may move the hearing to an earlier date.
- (4) The respondent shall file a written answer to the complaint not later than thirty days after service of the notice of hearing. The answer shall include either a request for, or a waiver of the right to request, an administrative law judge if the penalty for the alleged violation may be greater than \$500. The board may extend the time for an answer, on a showing of good cause. Absent a showing of good cause, failure to file a written answer shall be deemed an admission to the facts alleged in the complaint and the determination.

**(F) H. Conduct of Hearings**

- (1) From the time the board issues notice of a public hearing on a complaint, the proceeding shall be conducted pursuant to the Administrative Procedures Act (chapter 34.05 RCW), except as modified by chapter 42.52 RCW or these rules. Prior to the issuance of such notice, the board's consideration and disposition of a complaint shall not be considered an adjudicative proceeding. In the case of a conflict between Chapter 34.05 RCW and these procedures rules, the procedures rules adopted by the board shall take precedence.
- (2) All hearings conducted under this section are open to the public. The board's deliberations on a complaint that do not occur during a public hearing are confidential. The staff's written investigative results submitted to the board under subsection C(4) are also confidential.
- (3) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates, either by request of a respondent pursuant to RCW 42.52.500, or by the board on its own initiative, the board may choose to sit with the administrative law judge to hear the matter and to enter

a final order at the conclusion of the proceedings; or to have the administrative law judge hear the matter alone and prepare an initial order for review by the board. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters.

(4) Parties to a complaint proceeding shall be the respondent and the ((board)) staff assigned to present the case in support of the complaint pursuant to RCW 42.52.430(2). Parties are subject to the ex parte restrictions stated in RCW 34.05.455.

(5) When a complaint has been filed with the board, neither the complainant, if other than ((board)) the staff, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board.

(6) ((Board)) The staff assigned to investigate a complaint pursuant to RCW 42.52.420 may be subsequently assigned as adviser(s) to the board following a determination of reasonable cause, without regard to the restrictions of RCW 34.05.455 and .458.

(7) The board may subpoena witnesses, compel their attendance, administer oaths, take testimony of a persons under oath, and require production for examination of any books, papers, documents or tangible things relating to any matter under investigation or in hearing before the board. The subpoena shall:

(a) Specifically describe the testimony which is sought; and materials to be produced, in the form of designated books, papers, documents or tangible things under control of the witness;

(b) Set forth a reasonable time and place for the taking of testimony and production of the materials; and

(c) Notify the person who has been subpoenaed that if the testimony is not given or designated materials are not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(8) No party shall have the right to issue subpoenas; or to demand interrogatories, depositions, or other forms of discovery, without prior approval by the board.

(9) The board may conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(10) The time limits stated in RCW 34.05.419 shall not apply to board complaint proceedings.

(11) Service of notices, filings, pleadings and other papers shall be made personally or by first-class, registered, or certified mail; by electronic telefacsimile transmission and same-day mailing of copies; or by commercial parcel delivery company. Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by electronic telefacsimile transmission shall be regarded as completed upon production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company with charges prepaid.

#### **((G)) I. Prehearing Conferences**

(1) In any proceeding, the board on its own motion or upon request by a party or ((their)) the party's authorized representative, may direct the parties to appear at a specified time and place for a conference to consider:

(a) Simplification of issues;

- (b) The necessity of amendments to the hearing notice;
  - (c) The possibility of obtaining stipulations, admissions of facts and of documents;
  - (d) Limitation on the number of witnesses; and
  - (e) Procedural and such other matters as may aid in the disposition of the proceeding.
- (2) Prehearing conferences may be presided over by the board or an administrative law judge.
- (3) Prehearing conferences may be held at a time and place, or by telephone, television, or other electronic means, as specified by the presiding officer.
- (4) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

#### **(H) J. Stipulation and Settlement**

- (1) Any matter before the board may be settled by stipulation after completion of the staff investigative report. Settlement of a matter may be concluded by:
- (a) Stipulation of facts; or
  - (b) Stipulation of facts, conclusions and penalty.
- (2) A stipulation must be signed by the respondent or his or her representative, and presented to the board. If the stipulation is presented prior to a board determination of reasonable cause, the stipulation shall be received in executive session. If the stipulation is received after the determination of reasonable cause, it shall be received at the public hearing.
- (3) The board may accept, reject or modify the proposed stipulation. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent and enters an order in conformity with the stipulation, the stipulation shall become part of the public record. If the stipulation is rejected by the board, it shall be withdrawn and cannot be used by or against the respondent in any proceeding before the board.
- (4) The board may direct staff to commence discussions with the respondent or his or her representative in an effort to achieve a stipulation. Staff has no authority to bind or obligate the board. The stipulation may be presented by staff who may recommend its acceptance, rejection or modification.

#### **(I) K. Final Order in Complaints**

- (1) If the board in its final decision determines that the person has committed a violation, it shall issue an order stating its findings of fact, conclusions of law, and specifying such enforcement or remedial action as the board finds appropriate. If the board in its final decision determines that the person has not committed a violation, it shall issue an order stating its findings of fact, conclusions of law, and dismissing the complaint.
- (2) Notification of the results of final orders in complaint cases shall be accomplished by simultaneous mailing to the complainant and respondent. Other distribution shall occur the following working day.
- (3) Following a hearing in which the board participates, the board shall:

(a) Set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Deliver, either in person or by mail, to the respondent, complainant, and news media and others who have requested notice of the board's actions, a copy of the findings of fact, conclusions of law and decision.

(4) Following a hearing in which the board does not participate, the administrative law judge shall:

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) Deliver, either in person or by mail, to each party, board member, and ~~((board counsel))~~ the staff, a copy of the findings of fact, conclusions of law and decision, including a statement of the right to request review of the initial order by the board.

(c) If neither party files exceptions to the initial order within 20 days, the board may adopt the initial order as the final order of the board.

(d) Within 20 days of entry of the initial order, either the ~~((board))~~ staff or the respondent may file written exceptions to the initial order. Such exceptions shall be served on all other parties, the Administrative Law Judge, ~~((board counsel))~~ the staff, and all members of the board. The board shall set a date for submission of written argument on the exceptions and shall notify the ~~((board))~~ staff and the respondent in writing.

(e) The board shall review the initial order, any exceptions and argument filed and shall issue a final order which shall be delivered, either in person or by mail, to the ~~((board))~~ staff, the respondent, complainant, and media and others who have requested notice of the board's actions.

#### **~~((F))~~ L. Brief Enforcement Hearings**

(1) The board may provide a brief enforcement hearing for violations of provisions in chapter 42.52 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations.

(2) A brief enforcement hearing may be presided over and conducted by the chair, or a member of the board designated by the chair.

(3) When a violation is alleged, before taking action, the ~~((board))~~ staff shall send the alleged violator notice, which shall include:

(a) Alleged violation;

(b) Maximum amount of the penalty which can be imposed at the hearing and the amount of any proposed fine; and

(c) Respondent's right to respond, within ten days, either in writing or in person to explain his/her view of the matter.

(4) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than \$500, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an enforcement hearing by the full board or an administrative law judge.

- (5) At the time any final action adverse to the respondent is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed and their right to request review by the board at the next scheduled board meeting.
- (6) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.
- (7) The board shall conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty-one days after the service of the initial order.
- (8) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.
- (9) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within thirty days after the date of the initial order or of the request for review, whichever is later.

**~~(K)~~ M. Procedures Applicable to Advisory Opinions**

The legislative ethics board shall issue advisory opinions with regard to the application of chapter 42.52 RCW and the rules adopted under the chapter. The following procedures apply to requests for advisory opinions:

- (1) Requests for advisory opinions may be made by any legislator, legislative employee, or board member. Requests may also be made by other persons with respect to the application of the State Ethics Act to them. A request must be stated hypothetically unless the individual requests a specific opinion concerning his or her own conduct. Requests must be written, signed, and directed to the chair of the board in care of Board Counsel, PO Box 40482, Olympia, WA 98504-0482. Requests shall supply such information as the board requires to enable it to issue the opinion. The identity of the person making the request shall be known only to the chair and staff of the board, unless such confidentiality is waived in the request. Requests for advisory opinions must be received more than six days prior to a scheduled board meeting to be considered at that meeting; the board may waive this notice requirement only by a unanimous vote of those present.
- (2) The board shall either:
  - (a) Issue a written advisory opinion; or
  - (b) notify the person requesting such opinion that the request is denied and the reason(s) for the denial.
- (3) The staff shall notify the person requesting the opinion as to the status of the request within thirty days and at thirty day intervals thereafter until final action is taken.
- (4) Upon receipt, requests shall be assigned a reference number. The board shall maintain and keep current for public inspection a status sheet which shall contain with respect to each request: Its reference number, the date received by the board, and its present status.
- (5) The board shall make available to the public copies of the status sheets and advisory opinions issued by the board.

#### **~~(L)~~ N. Procedures Applicable to Informal Advice**

- (1) It is a function of the (~~board's~~) staff to provide ethics advice to persons eligible to request advisory opinions. In providing such advice, the staff should also provide a disclaimer that the advice represents solely the opinion of the staff and is not the opinion of the Board or in any respect binding on the Board.
- (2) In considering a complaint, the board will give weight to the fact that the person charged in the complaint relied in good faith on staff advice.
- (3) The board may review staff advice provided under subsection (1) and may approve or disapprove of any advice so provided. However, any such approval or disapproval is limited to whether the staff had reasonable grounds for the advice and should not be interpreted as indicating that the board approves or disapproves the actual advice provided. Only advisory opinions issued by the board and complaints decided by the board may be relied on for purposes of determining how the board will interpret a provision of the State Ethics Act.

#### **(M) O. Designated Ethics Advisers**

- (1) The Chief Clerk of the House and the Secretary of the Senate may each designate and assign legal counsel as "Designated Ethics Advisers" to assist legislators, legislative staff and, if requested, the Legislative Ethics Board. The responsibilities of such advisers should be in accordance with this rule.
- (2) No more than two such Designated Ethics Advisers may be from each legislative body and their designation and assignment should be within the sole discretion of the Chief Clerk of the House and the Secretary of the Senate, respectively.
- (3) The advisers may assist legislators and employees, in their respective legislative bodies, with advice and analysis based upon legislative ethics statutes and rules and upon published opinions of the Legislative Ethics Board. In those instances where an adviser has conferred with the (~~Board~~) staff, and the (~~Board~~) staff has concurred with the proposed advice, the advice shall be deemed to be entitled to the protections afforded in Rule 1 (~~L~~)M(2). Advice or analysis, which is not concurred in by (~~Board~~) staff, will be viewed as in-house legal advice and outside the scope of the protections provided in Rule 1(~~L~~)M(2). Requests for advisory opinions are appropriate in cases where designated ethics advisers and (~~Board~~) staff disagree.
- (4) The advisers are expected to serve as liaison between their respective legislative bodies, including their chief administrative officers, and the (~~Board~~) staff, and may communicate matters of mutual concern to the Board.
- (5) The advisers, in coordination and consultation with (~~Board~~) the staff, may develop and assist (~~Board~~) the staff to implement a program of ethics training and education for legislators and legislative staff.
- (6) The advisers should, to the extent reasonably possible, attend Board meetings and be available and prepared to comment on matters before the Board with the exception of formal complaints. The designated advisers will not participate in the Board's review and decision making on formal complaints before the Board.



(7) The designated advisers may assist legislators and staff in the preparation of advisory opinion requests, responses to complaints, and other communication with the Board but shall not, however, represent members or staff before the Board as advocates on their behalf.