

2014

# RULES & REGULATIONS OF THE CODE OF CONDUCT REVIEW BOARD



Doc# 2014022350

03/20/2014 10:11 AM Page: 1 of 11  
NOT R: \$0.00 M. Toulouse Oliver, Bernalillo County



Peter Auh, Bernalillo County  
Assistant County Attorney, Sr.

State of New Mexico  
County of Bernalillo

Subscribed and sworn to before me this 20<sup>th</sup> day of March, 2014.



**OFFICIAL SEAL**  
**Connie Gilman**  
NOTARY PUBLIC

My Commission Expires: 3/17/17

  
Notary Public

## **RULES AND REGULATIONS OF THE CODE OF CONDUCT REVIEW BOARD**

**Section 1.** Pursuant to the authority granted by the Board of County Commission, the Code of Conduct Review Board (hereinafter referred to as the "Board") issues the following Rules and Regulations for its conduct, and for interpretation and enforcement of the Bernalillo County Code of Conduct Ordinance, (hereinafter referred to as the "Ordinance").

In the event that these Rules and Regulations are in conflict with the provisions of the Ordinance, the provisions of the Ordinance shall prevail.

### **Section 2. ADVISORY OPINIONS**

#### **A. The Board shall issue advisory opinions pursuant to the following procedures.**

1. The Subcommittee: A subcommittee of the Board shall review advisory opinion requests from individuals who are subject to the Ordinance. The subcommittee shall consist of the Chair (or his/her designee) or the Vice Chair of the Board (or his/her designee) and a second member of the Board who shall be designated by the Chair on an ad hoc basis. The subcommittee shall make recommendations to the entire Board on each opinion request.

2. A request for advisory opinion shall be submitted to the Board by serving the request with the County Compliance Office. The request shall be forwarded to the Chair of the Board.

3. The subcommittee may require the individual requesting an opinion to provide additional information and to appear before the subcommittee to respond to questions related to the request.

4. The Board shall review all recommendations from the subcommittee. The individual requesting an opinion may attend such review hearing. The Board may require the individual requesting the opinion to answer questions or provide additional information or documentation at the review hearing. The Board may modify the recommended advisory opinion submitted by the subcommittee.

5. Each advisory opinion shall be issued only after a majority of the entire membership of the Board has voted in favor of the advisory opinion.

#### **B. Confidentiality, Public Hearings and Public Record.**

1. The meetings of the subcommittee shall not be open to the public. The review hearing *on* advisory opinions by the Board shall be an open meeting.

2. All advisory opinions approved by the Board shall be filed with the County Compliance Office and shall be a public record.

### **C. Advisory Opinion Requirements.**

1. Any individual seeking an advisory opinion shall file a request for advisory opinion with the County Compliance Office.
2. Any candidate, public servant or the Compliance Officer may request any advisory opinion regarding the applicability or interpretation of the Code of Conduct.
3. The request shall be only about prospective conduct, or application of the Ordinance, not past or present actions.
4. The request must be about a real or potential issue regarding the applicability or interpretation of the Code of Conduct.
5. All material facts must be revealed in the request.
6. The individual who is issued an advisory opinion is the only one who may use the opinion as a defense.
7. The Board may include in the advisory opinion that the individual must take particular actions or refrain from certain conduct in order to be eligible to use the advisory opinion as a defense to any future Complaint.

### **D. Advisory Opinions as a Defense.**

1. An individual who receives an advisory opinion may rely on the opinion under the following conditions. If a Complaint is filed against that individual based on the same facts that are the basis for the opinion request, the individual may raise the advisory opinion as a defense in his response to the Complaint or any portion of the Complaint. The Board shall determine if the opinion was followed and whether the Complaint is based on the same facts revealed in the opinion request. If both are found, the Board shall dismiss the Complaint or that portion of the Complaint that pertains to the advisory opinion.
2. In the event the Board finds that material facts were omitted by the individual in requesting the advisory opinion, that the individual did not follow the advisory opinion, *or* that the Complaint involves material facts other than those that are the basis of the advisory opinion, the Board shall not dismiss the Complaint solely on the basis of the advisory opinion, however, the individual may use the advisory opinion as part of his defense.
3. Advisory opinions may be used by both Complainants and Respondents as precedent, but such opinions are not binding on the Board unless it is an opinion found by the Board to have issued to and followed by the Respondent pursuant to this section.

### **Section 3. COMPLAINT AND HEARING PROCESS**

#### **A. Complaints and Violations.**

1. A Complaint alleging a violation of the Ordinance shall be made in writing by the filing of a signed and sworn statement attesting to the truth of its contents. The Complaint shall include documentation as to time, place, facts, and the names of any witnesses to the alleged violations.

2. The Complaint shall specify the provision or provisions of the Ordinance alleged to have been violated and provide a clear and concise statement of what events took place that the Complainant believes violated the provision or provisions of the Ordinance cited in the Complaint. No Complaint shall be accepted for filing unless it is signed and sworn, and unless the documentation referred to above and the statement of the provision alleged to have been violated or reason *for* the Complaint is presented at the same time the Complaint is offered for filing.

3. The Board will not set for hearing any Complaint charging a violation alleged to have occurred more than one (1) year prior to the date of the Complaint.

4. All Complaints shall be filed in accordance with the Ordinance. After service is made the Complaint will be delivered within three (3) business days to each member of the Board and each Respondent.

5. Respondents may file a statement with the Board explaining why the Complaint fails to state a violation of the Ordinance. Respondents who have received an advisory opinion regarding the issue raised in the Complaint must raise this as a defense to the Complaint at this time. Respondents shall be given ten (10) calendar days, notice of the preliminary hearing. The Respondent's statement shall be filed with the County Compliance Office five (5) calendar days prior to the preliminary hearing. The County Compliance Office shall provide the Complainants and Board members with the Respondent's statement three (3) County business days prior to the preliminary hearing.

6. The Chair or his/her designee may require upon the timely request of a party that County documents be provided for purposes of a hearing and that County witnesses be made available to testify at the hearing.

#### **B. Preliminary Hearing**

##### **1. Preliminary Hearing Process and Requirements.**

a. After reviewing the Complaint at a preliminary hearing the Board shall issue a preliminary order consistent with the provisions contained within the Ordinance and these Rules.

b. A preliminary hearing shall be held by the Board for the purpose of deciding whether to accept a Complaint for further investigation and/or an

evidentiary hearing. The Board's decision shall be based on findings that the factual statements made in the Complaint, taken as being true, establish that Respondent has violated the provision or provisions of the Ordinance that are cited in the Complaint.

c. Complainants and Respondents and their representatives shall, at the request of the Board, address the Board at the preliminary hearing. Such presentations shall be limited to discussion of whether the Complaint contains sufficient factual allegations to support a finding that a violation of the Ordinance occurred. No testimony shall be accepted and no argument about the accuracy of the facts alleged in the Complaint shall be accepted at this hearing. The Board shall also consider the Complaint, Respondent's response to the Complaint and any other documentation provided at the request of the Board.

d. Reasons for Dismissing a Complaint: At a preliminary hearing, the Board may dismiss a Complaint if any one of the following is found or for such other reason as may be determined by the Board.

i. The Board has no jurisdiction over the subject matter specified in the Complaint or over the Respondent.

ii. The time in which a Complaint could be filed has run.

iii. The conduct alleged in the Complaint, if true, would not constitute a violation of the Ordinance.

iv. The Complaint on its face is frivolous, groundless, or brought for the purpose of harassment.

v. The subject of the Complaint has become moot.

vi. The Respondent had obtained an advisory opinion concerning the identical facts alleged in the Complaint and Respondent complied with the advisory opinion.

e. Appeal. A Complainant who is aggrieved by the Board's rejection of the Complainant's Complaint may file an appeal to the District Court according to the District Court rules.

f. The Chair shall promptly set hearing dates and deadlines for Complaints not rejected.

g. Persons required to testify before the Board, shall be served with a subpoena issued by the Board and signed by the Chair of the Board or his designee. Complainants and Respondents shall request issuance of subpoenas through the County Attorney's office in a timely manner.

### **C. Consent Order/Settlement Process**

1. At any time after the filing of the Complaint, the Respondent may offer to settle the Complaint by admitting to the allegations in the Complaint and requesting a settlement conference with the County Compliance Office. Based on the settlement conference, a proposed settlement agreement shall be prepared and submitted to the Board. The settlement agreement shall state the sections of the Ordinance violated, the action taken or to be taken by the Respondent to correct the violation and proposed sanctions, if any, upon Respondent.

2. Upon receipt of a proposed settlement agreement, the Board shall meet to determine if it will accept the settlement agreement. Board acceptance of a settlement agreement shall be by a majority vote of those Board members in attendance. Upon acceptance, the Board shall issue a consent order that shall be provided to all parties. The review of the settlement agreement and vote on the consent order shall be conducted at a public hearing, Testimony shall not be allowed at such hearing nor shall argument of the parties be accepted. The Respondent shall attend the hearing to confirm his acceptance of remedial measures, if any, to be taken by Respondent and sanctions imposed. The consent order shall be a final order concluding the case. The settlement agreement approved by the Board and the consent order shall be public records. In the event a settlement agreement is rejected by the Board. Such settlement agreement may not be used as evidence in any subsequent hearings.

### **D. Answers.**

Answers shall include a response to each allegation in the Complaint and shall be filed with the County Compliance Office by all Respondents at a date as provided for in the Preliminary Order after the Respondent receives notice that the Board has accepted the Complaint at a preliminary hearing and it shall be set for a full evidentiary hearing. Each Respondent shall send a copy of his/her Answer to each Complainant by first class mail and certifying that such mailing occurred on or before the date the Answer was filed with the County Compliance Office.

### **E. Hearings.**

In conducting hearings, all parties shall be afforded an opportunity for a full and fair hearing. In this regard, the Board shall follow these procedures:

1. Parties.

The party filing a Complaint with the Board shall be referred to herein as the "Complainant" and the party responding to alleged violations of the Ordinance shall be referred to herein as the "Respondent."

2. Notice.

a. The Board shall give at least ten (10) calendar days written notice of the hearing to each party stating the time and place of the hearing.

b. The notice of hearing shall contain a brief description of the matter to be heard so that all participants have an opportunity to prepare for the hearing,

c. The notice of hearing shall contain deadlines for parties to submit a written statement of issues to be addressed, witness lists, and copies of all documentary evidence to be introduced. A party's failure to make a timely objection to the authenticity of opposing party's exhibits shall result in the admission of those exhibits.

3. Continuances.

Requests for continuances shall be made by parties, in writing, prior to the hearing, and shall be delivered to the Compliance Office to the attention of the Board and the opposing party. The Chair of the Board may grant a continuance for good cause.

4. Evidence.

a. The Board shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded. It is the policy of the Board that testimony and information presented during the hearing must have a direct and substantial bearing on the case at hand.

b. The rules of evidence for the conduct of administrative hearings shall apply.

5. Hearing Procedure.

a. The Chair of the Board shall act as the presiding officer at the hearing unless he/she is unavailable or does not wish to perform this duty in which case the Vice-Chair of the Board shall serve as the presiding officer. In the event neither the Chair nor the Vice-Chair is able to perform this duty the Board members shall select a presiding officer. The presiding officer:

i. Shall determine the admissibility of evidence and testimony;

ii. Shall make rulings on procedural issues; and

iii. Shall be responsible for the Board's written ruling in each case,

iv. May issue an administrative subpoena for the appearance of a person at a hearing or for the production of documents, or both.

v. May request the County Attorney to apply for a court order compelling compliance with an administrative subpoena or for a Court order requiring the giving of the testimony or production of documents.

vi. May impose reasonable limits on the number of witnesses to be heard and on the nature and length of the testimony or examination of persons appearing at such hearings.

vii. May set time limits for presentation of opening and closing statements.

viii. May prohibit repetitive testimony.

b. Should an action of the presiding officer challenged by another Board member, and should the presiding officer disagree with the challenge, the issue will be decided by a majority vote of the Board members present.

c. The Board may, but is not required to recognize any agreements on facts and issues between the parties and eliminate certain facts not in dispute in defining the issues to be heard.

d. Prior decisions by the Board on the same issue will generally be followed and the parties are urged to refer to prior rulings on identical or similar issues. Prior decisions are available at the County Compliance Office. The Compliance Office shall index all Board case decisions by subject and date.

e. The Board may request clarification by the Complainant of a Complaint prior to any hearing. The Board may request that certain facts be examined initially in order to determine whether such facts exist as will support the allegations to be heard, or make any other rulings that are procedural, limiting, dispositive, or otherwise, which are in accordance with the law as applied to the facts at issue.

f. Any party may be represented by representatives which may but do not have to be attorneys.

g. The Board may dismiss a Complaint after hearing evidence if it finds that the Respondent committed the violation due to an oversight, Respondent has come into compliance voluntarily and the Board determines that no sanction is required or when the Complainant does not appear at a hearing, but only if the Board determines that it would be unfair to the Respondent not to have the opportunity to examine the Complainant.

h. In the absence of the Board's decision to proceed in a different manner, notice of which shall be given to the parties at least three (3) days in advance of the hearing, the sequence of the hearing shall be as follows:

i. Opening Statement of Issues:

The Complainant and then the Respondent will present statements of issues involved in the case and outline the case that will be presented. Opening statements shall be limited to five (5) minutes per side.

ii. Complainant's Presentation of their Case:

The Complainant's case will first be presented to the Board. Witnesses for the Complainant will be called, sworn, and questioned on their involvement in or knowledge of the case. Following each witness's testimony, the Respondent will have the opportunity to question the witness. Board members will then have the opportunity to question the witness on matters related to his/her testimony. Follow-up questioning by the Complainant will be allowed at the discretion of the presiding officer. This procedure will be followed for each of the Complainant's respective witnesses. Complainant shall have one (1) hour to present their case including all witness testimony and submission of exhibits.

iii. Presentation of Respondent's Case:

Respondent's presentation shall follow Complainant's and the same format as the presentation of Complainant's case shall apply. Respondent shall have one (1) hour and fifteen (15) minutes to present their case including all witness testimony and submission of exhibits.

iv. Rebuttal Testimony:

Following presentation of the Respondent's position, the Complainant will be allowed to present rebuttal testimony at the discretion of the presiding officer. Such testimony shall be brief and specifically address the issues brought forth in the Respondent's presentation. No new issues shall be raised. The Complainant shall have fifteen (15) minutes to present any rebuttal testimony.

v. Closing Statements:

At the conclusion of the case presentations and rebuttal testimony, the Complainant and Respondent will each make his/her closing statements. The closing statements should briefly review the issues presented and the desired outcome. The Complainant will then have the opportunity to make a final statement, which shall be limited to issues

brought forth in the Respondent's closing statement. Closing statements shall be limited to ten (10) minutes per side.

vi. Decision:

Any decision or opinion of the Board, including findings of fact, which shall consist of a written statement of the facts relied on to support the decision of the Board, shall be given to each party by certified mail or personal service, and shall be filed in the office of the County Compliance Office.

vii. Record:

The following records of the Board's proceedings shall be kept:

a. A full record of the hearing by sound recording or by court reporter, (which shall be retained for one (1) year after the final decision is issued);

b. All documents of other items considered and received as evidence; and

c. Any decision or opinion of the Board.

viii. Appeal:

A Complainant who is aggrieved by the Board's rejection of the Complainant's Complaint may file an appeal to the District Court according to the District Court rule

#### **Section 4. MISCELLANEOUS**

##### **A. Notice.**

Any notice required by the Ordinance shall be given by certified mail, personal service or as provided below. For the purposes of providing notice to a Candidate, written notice mailed or delivered to the address specified in a Candidate's Declaration of Candidacy shall be considered sufficient notice to the Candidate.

##### **B. Meetings.**

The Board shall comply with the provisions of the New Mexico Open Meetings Act relating to notice to the public of its meetings and meetings being open to the public. The length of notice given to the public of the Board's meetings shall be determined by annual resolution.

**C. Amendments.**

The Board, by majority vote, may amend these Rules and Regulations pursuant and subject to the authority granted under the Ordinance.

**D. Quorum**

The Board may not act on any matter without a quorum being present.

**E. Robert's Rules of Order**

In the absence of any controlling authority contained either in the Code of Conduct Ordinance or these Rules, any matter not covered in these Rules shall be controlled pursuant to Robert's Rules of Order.

**F. Effective Date and Filing.**

These Rules shall be effective upon filing with the Bernalillo County Clerk.

Approved by the Code of Conduct Review Board on March 19, 2014.