

Nassau County Board of Ethics
Rules of Procedure for Adjudicatory Proceedings and Appeals relating to
Assessment of Civil Penalties

1. Intent and Purpose

The intention and purpose of the Nassau County Board of Ethics (“the Board”) in adopting these rules of procedure is to ensure employees due process protections in adjudicatory proceedings and appeals before the Board prior to the assessment of civil penalties pursuant to Nassau County Administrative Code (“Code”) § 22-4.3(5)(c).

2. Notice of Delinquency and Notice of Reasonable Cause

(a) If an individual required to file a financial disclosure-statement with the Board of Ethics has failed to file a financial disclosure statement or has filed a deficient statement, said board shall notify the reporting person in writing, state the failure to file or detail the deficiency, provide the person with a fifteen (15) day period to cure the deficiency, and, advise the person of the penalties for failure to comply with the reporting requirements. Such notice shall be confidential. If the person fails to make such filing or fails to cure the deficiency within the specified time period, said board shall send a Notice of Delinquency:

- (1) to the reporting individual; and
- (2) In the case of an officer or employee, to the appointing authority for such person.

(b) Where there is a possible violation of § 22-4.3 of the Code other than failure to file a financial disclosure statement or filing of a deficient statement, the Board or Executive Director, subsequent to an investigation of such possible violation, and after compliance with the provisions of Subdivision 6(r) of said Code section, determines that there is reasonable cause to believe that such violation has occurred, it shall send a Notice of Reasonable Cause:

- (1) To the subject of the investigation;
- (2) To the complainant, if any; and
- (3) In the case of an officer or employee, to the appointing authority of such person.

(c) Hearings shall be conducted after the Notice of Delinquency or Notice of Reasonable Cause has been sent. All parties shall be afforded an opportunity for hearing within reasonable time.

3. Notice of Hearing or Proceeding (Form)

(a) Where the Board elects to go forward with a proceeding to determine whether a civil penalty should be assessed pursuant to §22-4.3 of the Code, the Board shall give written notice to the parties. Such notice may be delivered together with or at any time after the delivery of the Notice of Delinquency or Notice of Reasonable Cause. The Notice of Hearing or Proceeding shall contain the following:

- (1) A statement of the time and place of the hearing or proceeding;
- (2) A statement of the nature of the hearing or proceeding;
- (3) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (4) Reference to the particular sections of the statutes and rules relevant to the hearing or proceeding, where possible;
- (5) A short, plain language statement of the violations asserted; and
- (6) A statement that interpreter services shall be made available to deaf persons, at no charge, pursuant to section 301 of the State Administrative Procedure Law; and
- (7) The name of the presiding officer assigned to the hearing.
- (8) Upon application of any party, a more definite and detailed statement shall be furnished whenever the Board finds that the statement is not sufficiently definite or not sufficiently detailed. The finding of the Board as to the sufficiency of definiteness or detail of the statement or its failure or refusal to furnish a more definite or detailed statement shall not be subject to judicial review. Any statement furnished shall be deemed, in all respects, to be a part of the notice of hearing.

(b) A plain language summary of these rules shall accompany each Notice of Hearing or Proceeding which is sent pursuant to these regulations. Such summary shall be available to the public on request.

4. Time and Place of Hearing or Proceeding

(a) The time and place of the hearing or proceeding shall, as far as practicable, take into account the convenience of the parties and the availability of witnesses.

(b) Whenever any deaf person is a party to a hearing or proceeding before the Board, or a witness therein, the Board in all instances shall appoint a qualified interpreter who is certified by a recognized national or New York State credentialing authority to interpret the proceedings to, and the testimony of, such deaf person. Interpreting services shall be provided at no charge to the deaf person.

5. Evidence and Proof

(a) The formal rules of evidence do not apply to adjudicatory hearings or proceedings conducted pursuant to these rules. However, the rules of privilege

recognized by law shall be given effect. Objections to evidentiary offers may be made and shall be a part of the record. Subject to the agreement of the board and the parties, any party may, for the purpose of expediting the hearing or proceeding and when the interests of the parties will not be substantially prejudiced thereby, submit all or part of the evidence in written form.

(b) No decision or determination by the presiding officer or the Board shall be made except on consideration of the record as a whole, or such portions thereof as may be cited by any party to the hearing or proceeding and as supported by and in accordance with substantial evidence.

(c) Each party shall have the right to call witnesses and the right of cross-examination of any witness.

(d) Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Board. When official notice is taken of a material fact not appearing in the evidence and of which judicial notice could not be taken, every party shall be given notice thereof and shall, on timely request, be afforded an opportunity prior to decision to dispute the fact or its materiality.

(e) All findings of fact shall be based exclusively on the evidence in the record and on matters officially noticed.

(f) All parties shall be afforded an opportunity to present written argument on issues of law and an opportunity to present evidence and such argument on issues of fact. Oral argument shall be permitted where otherwise allowed by these rules.

(g) All evidence, including records and documents in the possession of the Board of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

6. Representation

Any person compelled to appear in person, or who voluntarily appears in any hearing or proceeding conducted according to these rules, shall be accorded the right to be accompanied, represented, and advised by counsel. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others in any hearing or proceeding herein.

7. Adjournments

(a) Where a party requests adjournment of any hearing or proceeding conducted pursuant to these rules, such adjournment shall be granted only for good cause.

(b) Written requests for adjournment shall be submitted to the presiding officer in the hearing or proceeding for which the adjournment is sought. The request must be accompanied by an affidavit which contains sufficient detail to allow the presiding officer to rule on the request.

8. Time Limits

(a) Under these rules adjudicatory proceedings shall be conducted in an expeditious manner with all due regard for the rights of the parties concerned. Every effort should be made by the parties to effectuate a speedy disposition of the case.

(b) Parties to any hearing or proceeding are required to file all papers, statements, proofs, and other evidence with the presiding officer at a time to be designated by the officer. An extension of time for filing those items may be granted by the presiding officer but only upon formal request.

9. Decision After Hearing or Proceeding

(a) All final decisions, determinations, or orders shall be in writing or stated in the record and shall include findings of fact, conclusions of law, and reasons for the decision or determination and, when appropriate, shall direct that specific action be taken by the parties. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) A copy of all final decisions, determinations, or orders of the Board shall be made available to the parties to the hearing or proceeding, and shall be delivered or mailed forthwith to each party and to its representative of record.

(c) The Board shall maintain the final decision or determination in any hearing or proceeding in a file with an index by name of party and subject matter. The index and the notice of civil assessment, if any, shall be made available for public inspection and copying except as provided in Sec.15 of these rules. Each decision or determination shall be so filed and indexed within sixty (60) days after having been rendered.

10. Failure to Appear

The party who is the subject of the hearing shall at no time be deprived of the opportunity to appear. However, if a party has received two (2) written notices of a hearing and fails to appear after each notice, the Board, upon proof of receipt of notice and absent a finding of good cause for failure to appear, shall have the authority to proceed and may issue appropriate penalties. Proof of receipt of notice shall consist of a signed certified mail receipt or affidavit or other signed receipt.

11. Presiding Officer

All hearings or proceedings under these rules shall be conducted by a presiding officer who shall have the power and authority of presiding officers or hearing officers as defined by the State Administrative Procedure Act (SAPA), any other pertinent statute, and these regulations. The presiding officer shall be designated by the Board and may be a member of the Board. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the Board shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the hearing or proceeding.

Whenever a presiding officer is disqualified or it becomes impractical for him to continue as presiding officer, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom. Where a presiding officer is changed in advance of the hearing or proceeding, parties will be notified of the change as practicable.

12. Powers and Duties of Presiding Officer

Except as otherwise provided by statute, a presiding officer is authorized to do the following in any hearing or proceeding to which assigned:

- (a) Administer oaths and affirmations;
- (b) At the request of any party, sign and issue subpoenas in the name of the Board requiring the attendance and giving of testimony by witnesses and the production of books, papers, documents, and other evidence. Subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall affect the authority of an attorney for a party to issue such subpoenas under the provisions of the Civil Practice Law and Rules;
- (c) Provide for the taking of testimony by deposition; and
- (d) Regulate the course of the hearings, set the time and place of continued hearings and the time for filing of briefs and other documents.

13. Fines, Penalties

(a) Where the Board determines that it is appropriate to assess a penalty or fine, all parties to the proceeding shall be notified of said determination as part of the notice delivered or mailed to the parties pursuant to subdivision (b) of section 9. The parties shall have an opportunity to respond in writing to such notice, in the form of a brief, and such written response shall be directed to the Board for its consideration within fifteen (15) days after the mailing or delivery of the notice. In the brief, the parties may not submit or discuss evidence which is not a part of the official record of the hearing or proceeding. Upon consideration of the brief, the Board of Ethics may modify, suspend or vacate any civil penalty assessed.

(b) Assessment of a civil penalty shall be final unless modified, suspended, or vacated within thirty days of imposition, and upon becoming final shall be subject to review at the instance of the affected reporting individual in a proceeding against the Board of Ethics pursuant to article seventy-eight of the civil practice law and rules.

(c) If the alleged violation has been established, and the Board determines in light of all the circumstances that the violation is not serious enough to warrant assessment of a civil penalty, or if the imposition of civil penalties is not otherwise authorized by law, the Board in its discretion may take such other action as is appropriate, including but not limited to a written admonition or a recommendation that disciplinary action be taken or a referral to a prosecutor for prosecution of criminal charges. The Board may forward a copy of such admonition or recommendation for disciplinary action to the individual's appointing authority, as appropriate.

14. Record of Hearing or Proceeding

- (a) The record in hearings or proceedings under these rules shall include:
- (1) All notices, pleadings, motions, and intermediate rulings;
 - (2) Evidence presented;
 - (3) A statement of matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
 - (4) Questions and offers of proof, objections thereto, and rulings thereon;
 - (5) Proposed findings and exceptions, if any;
 - (6) Any written recommendation made by the presiding officer, provided, however, that nothing herein shall require such recommendations; and
 - (7) Any finding of fact, conclusion of law, decision, determination, opinion, order, or report rendered.

(b) The Board shall make a complete record of all hearings and proceedings conducted before it. For this purpose, unless otherwise required by statute, the Board may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Within a reasonable time after the Board gives notice of its decision, determination, opinion, or order, but before commencement of judicial review, any party to the hearing or proceeding may request the Board to prepare the record or any part thereof, together with any transcript of the hearing or proceeding or any part thereof. The Board shall then prepare the requested portions of the record and transcript within a reasonable time and furnish a copy to the requesting party. Except when any statute provides otherwise, the Board shall charge not more than its cost for preparing and furnishing the requested portions of the record and transcript, or the rate specified in any contract between the Board and a contractor if prepared by a private contractor.

15. Privacy/confidentiality

(a) Pursuant to the section 22-4.3 of the Nassau County Administrative Code, the only financial disclosure records of the Board which shall be available for public inspection are:

- (1) The information set forth in the Annual Statement, except the categories of value or amount, which shall remain confidential, and any other item of information deleted pursuant to Subdivisions 6(h) or 7(h) of §22-4.3 of the Code;
- (2) Notices of delinquency;
- (3) Notices of reasonable cause; and
- (4) Notices of civil assessment.

(b) Pursuant to section 22-4.3 of the Nassau County Administrative Code, hearings or proceedings conducted pursuant to these rules shall not be open to the public.