

1
2 **City of New Orleans, Louisiana**

3
4 **Rules for the Ethics Review Board**
5 **(Effective February 1, 2011)**
6

7 **Table of Contents**

8 **Chapter 1. Authority and Definitions**

9 § 101. Authority

10 § 102. Definitions

11 **Chapter 2. Organization, Rules, Procedures, and Powers of the Board**

12 § 201. Election of the Chair and Vice-Chair

13 § 202. Powers of the Board

14 § 203. Meetings

15 § 204. Quorum and Voting

16 § 205. Minutes of Proceedings

17 § 206. Publication

18 **Chapter 3. Public Comment**

19 §301. Purpose

20 §302. Oral Comments

21 §303. Written Comments

22 **Chapter 4. Advisory Opinions**

23 §401. General Requirements

24 §402. Dating and Docketing

25 §403. Placement on Agenda

26 §404. Consent Agenda

27 §405. Emergency Opinions

28 §406. Presentation of Requests

29 §407. Withdrawal

30 §408. Notification

31 §409. Reconsideration

32 **Chapter 5. Complaints**

33 §501. Who May File a Complaint

34 §502. Dating and Docketing

35 §503. General Requirements

36 §504. Complaints

37 §505. Consideration of Information Concerning Possible Violations

38 §506. Withdrawal

39 §507. Notification

40 **Chapter 6. Investigations**

41 §601. Board Investigations

42 §602. Investigation of Complaints

1	§603. Post-Investigation Procedures
2	Chapter 7. Consent Opinions
3	§701. General
4	§702. Procedures
5	Chapter 8. Hearings
6	§801. Private Hearings
7	§802. Initiating Public Hearings
8	§803. Notice of Public Hearings
9	§804. Continuance of Public Hearings
10	§805. Procedures in Hearings
11	§806. Evidence
12	§807. Subpoena of Witnesses and Production of Evidence
13	§808. Sequestration of Witnesses
14	§809. Summary of Disposition of Charges
15	§810. Consolidation of Public Hearings
16	§811. Transcripts of Public Hearings
17	§812. Witness Fees in Public Hearings
18	§813. Costs of Public Hearings
19	§814. Board Action of Following Public Hearings
20	§815. Rehearings
21	Chapter 9. Pre-hearings Procedures
22	§901. Discovery
23	§902. Motions and Exceptions
24	§903. Pre-hearing Notices
25	§904. Pre-hearing Conference
26	Chapter 10. Penalties
27	§1001. Penalties for Violations; Criteria
28	Chapter 11. Records and Reports
29	§1101. Custodian
30	§1102. Copies
31	§1103. Records and Reports; Accepting and Filing
32	Chapter 12. Electronic Filing
33	§1201. General
34	§1202. Methods of Filing
35	§1203. Time of Filing
36	§1204. Refusal of Electronic Reports
37	Chapter 13. Miscellaneous
38	§1301. Relations with Inspector General
39	§1302. Annual Report
40	§1303. Review of Board Rules
41	§1304. Method of Amendment
42	
43	

1 **Chapter 1. Authority and Definitions**

2
3 §101. Authority

4 The Ethics Review Board derives its rulemaking authority from Section 9-402 of
5 the Home Rule Charter and from the New Orleans Municipal Code Division 3.
6 Code of Ethics, Subdivision 1. Generally, Section 2-719 (9) Rules and
7 regulations, “The ethics review board, pursuant to section 4-107 of the Home
8 Rule Charter, shall adopt rules and regulations governing the transaction of its
9 business.”

10 §102. Definitions

- 11 A. “Board” means the New Orleans Ethics Review Board.
- 12 B. “Code” means the City Code of Ethics, Code of Ordinances City of New
13 Orleans, Part II, Article VII, Division III.
- 14 C. “Consent Opinion” means a written decision and order of the Board issued
15 with the agreement of the respondent in order to publicly settle any matter that
16 appears to be a violation of any law within the Board’s jurisdiction in lieu of
17 filing charges, holding a public hearing, or filing a civil action.
- 18 D. “Elected officials” means all elected officials of the government of the City of
19 New Orleans.
- 20 E. “Executive Director” means the employee in charge of the day to day
21 operations of the Board’s staff and business.
- 22 F. “General Counsel” means the employee” who has the authority and/or duty to:
- 23 (a) Advise the Board on legal issues related to all functions, duties and
24 responsibilities of the Board.

1 (b) Receive and screen all complaints submitted to the Board, recommend to
2 the Board, and upon authorization of the Board conduct investigations, make
3 recommendations to the Board on the disposition of complaints after an
4 investigation, file formal charges when directed to do so by the Board,
5 prosecute formal charges before the Board (including marshalling and
6 presenting evidence, causing subpoenas and subpoenas duces tecum to issue,
7 oral argument, filing of memoranda and briefs and the submission of all other
8 appropriate pleadings necessary in the performance of these duties), and file
9 briefs and other appropriate pleadings for the Board and orally argue the
10 Board's position on appeal;

11 (c) Perform such other duties as required by the Board.

12 G. "Fact-Finding" means the process whereby the staff gathers information so that
13 proper disposition can be made by the Board on requests for complaints, advisory
14 opinions, media reports, oral reports, referrals, or any other source. It includes any
15 preliminary or other inquiry into jurisdiction, analysis of information, basis and
16 fact of the request, and any other consideration necessary to determine if referral
17 to investigation or other action is appropriate.

18 H. "Person" means an individual or legal entity other than a governmental entity,
19 or an agency thereof.

20 I. "Public servant" means a public employee or an elected official.

21 J. "Public employee" means all employees of the government of the City of New
22 Orleans, including but not limited to: appointed officials; classified or unclassified

1 employees; and members and/or employees of all boards, agencies, commissions,
2 advisory committees, public trusts and public benefit corporations of the city.

3 K. “Respondent” means any person who is the subject of a complaint or an
4 investigation or any person to whom notice of charges is issued.

5 L “Trial Counsel” means the person designated by the Board to prosecute formal
6 charges before the Board (including marshalling and presenting evidence, causing
7 subpoenas and subpoenas duces tecum to issue, oral argument, filing of
8 memoranda and briefs and the submission of all other appropriate pleadings
9 necessary in the performance of these duties), and file briefs and other appropriate
10 pleadings for the Board and orally argue the Board’s position on appeal. The
11 trial counsel may be the General Counsel or another attorney specially retained by
12 the Board to perform this function.

13 **Chapter 2. Organization, Rules, Procedures, and Powers of the Board**

14 §201. Election of Officers

15 A. The Chair, Vice-Chair, Secretary, and other officers as designated by the
16 Board will be elected for a one-year term at the first meeting held following July
17 1 of each year.

18 B. In case of a vacancy in office, the Board must elect a new officer who will
19 serve until the expiration of the vacated term.

20 C. The duties of the Chair include: (1) presiding at all meetings of the Board when
21 present, (2) acting or directing the staff to act between meetings of the Board on
22 routine matters involving scheduling, docketing, appearances, continuances, and
23 postponements, (3) providing direction on behalf of the Board between meetings

1 to the Board’s counsel during litigation, (4) referring matters to investigation, and
2 (5) performing all other duties pertaining to the office of Chair or as may be
3 assigned by the Board.

4 D. In the absence of the Chair, the Vice-Chair will perform all the duties of the
5 Chair.

6 E. The duties of the Secretary include preparation of minutes at Board meetings
7 and other duties as may be assigned by the Chair or Board.

8 §202. Powers of the Board

9 A. The Board is empowered to:

- 10 1. Administer and enforce any law within its jurisdiction;
- 11 2. Represent the public interest in the administration of any law within its
12 jurisdiction;
- 13 3. Offer and enter into consent opinions regarding violations of the
14 provisions of any law within its jurisdiction;
- 15 4. Refer to fact-finding complaints, advisory opinions, media reports, oral
16 reports, referrals, or any other source;
- 17 5. Prescribe rules of order, evidence, and procedure to govern its meetings,
18 hearings, and investigations;
- 19 6. Take such steps as may be necessary to maintain proper order and
20 decorum during the course of its hearings and other proceedings,
21 consistent with the resolution of matters coming before it for
22 consideration; and

1 7. Include on the agenda for Board consideration any matter that is of
2 interest to any Board member and that is within the Board’s jurisdiction.

3 §203. Meetings

4 A. The Board may meet at such time and place as may be fixed by the Board.

5 B. Notice of each meeting must be given to all members of the Board.

6 C. Notice of each meeting must be given to the general public in compliance with
7 the requirements of the Open Meetings Law and may be posted on the website of
8 the Board.

9 D. All meetings must be open to the public except as otherwise provided by law.

10 §204. Quorum and Voting

11 A. Four members of the Board constitute a quorum for the transaction of the
12 business of the Board.

13 B. The concurrence of a majority of the members present and voting is required in
14 order to take action upon an item of business before the Board, except as
15 otherwise provided by law.

16 C. Brief absences during the consideration of an item of business will not
17 disqualify a member from voting on said item.

18 §205. Minutes of Proceedings

19 The minutes of the proceedings of the Board must be prepared and maintained by
20 the Secretary on behalf of and subject to the approval of the Board.

21 § 206. Publication

22 The Board must publish its decisions, opinions, notices, and various other
23 communications by:

- 1 (A) Maintaining a copy at the Board’s office as a public record,
- 2 (B) Delivering a copy to the New Orleans Public Library, and
- 3 (C) Posting the communication on the website of the Board.

4 **Chapter 3. Public Comment**

5 §301. Purpose

6 The purpose of this policy is to encourage public comment in a fair, consistent,
7 and informative manner at meetings of the Ethics Review Board, exclusive of formal
8 investigatory hearings. Order, decorum, and mutual respect must be maintained at all
9 times.

10 §302. Oral Comments

- 11 A. The Board may provide for public comment at any time that it deems
12 appropriate.
- 13 B. Public comment generally must be restricted to items covered in the agenda
14 for the meeting, except as the Board may otherwise provide.
- 15 C. A person wishing to address an item on the agenda must be present at the
16 beginning of the meeting. Exceptions may be permitted at the discretion of the
17 Chair.
- 18 D. “Comment Forms” must be provided for each public meeting. A person
19 wishing to comment must complete a “Comment Form” that indicates the
20 name, title, address of the speaker, and the organization or group represented.
21 The comment form must also include the subject of the comment and whether
22 the comment is in favor of, against, or merely informational regarding a
23 matter before the Board.

- 1 E. A maximum of three minutes per person, per agenda item may be afforded for
2 public comment. Additional time may be allocated at the discretion of the
3 Chair. If there are several speakers for a group or organization, the Chair may
4 limit the number of speakers.
- 5 F. Proponents of the proposal speak first, followed by opponents of the proposal,
6 and then by informational speakers.
- 7 G. Speakers are discouraged from making repetitive comments.
- 8 H. Unruly behavior, such as booing, hissing, or harassing remarks, is strictly
9 prohibited. Offenders will be removed from the meeting.

10 §303. Written Comments

- 11 A. A person wishing to make written comments may submit the comments to the
12 Board.
- 13 B. Written comments must identify the agenda items for the meeting to which
14 they are directed.
- 15 C. Written comments must indicate the name, title, address of the speaker, and
16 the organization or group represented. The comment form must also include
17 the subject of the comment and whether the comment is in favor of, against, or
18 merely informational regarding a matter before the Board

19 **Chapter 4. Advisory Opinions**

20 §401. General Requirements

- 21 A. The Board may receive and respond to requests for advisory opinions.
22 Requests for advisory opinions must be in writing, state the name and address of
23 the person requesting the advisory opinion, disclose the requestor's interest in the

1 question presented, identify the governmental agency and any individuals
2 involved or affected, specifically describe the transaction involved, be signed by
3 the person making the request, and state sufficient facts to enable the Board to
4 respond. The Board may decline to render an advisory opinion.

5 B. The Board may, on its own motion, render an advisory opinion regarding any
6 law within its jurisdiction.

7 C. The Board must send notice and a copy of the advisory opinion to the person
8 making the request, the governmental agency involved, if any, and any other
9 affected parties.

10 §402. Dating and Docketing

11 The Executive Director must maintain a docket of advisory opinion requests,
12 noting the date of receipt of each request and assigning to each request an
13 appropriate caption and number.

14 §403. Placement on Agenda

15 All requests for advisory opinions must be placed for consideration on the general
16 or consent agenda as soon as practicable.

17 §404. Consent Agenda

18 A. The staff may prepare a consent agenda consisting only of those advisory
19 opinions that are based on and consistent with prior opinions and decisions of the
20 Board or its predecessors.

21 B. If a member of the Board objects to considering a proposed advisory opinion
22 on the consent agenda, the item may not be considered on the consent agenda but
23 must be placed on the general agenda.

1 §405. Emergency Opinions

2 If the Executive Director determines that an emergency exists and that an
3 advisory opinion must be rendered prior to the next regularly scheduled meeting
4 of the Board, the Executive Director may, after consulting with the Chair of the
5 Board and legal counsel, issue a written advisory opinion. An emergency opinion
6 thus issued by the Executive Director may be relied upon until the Board adopts a
7 contrary or qualifying opinion. The emergency opinion must be placed on the
8 general agenda at the next meeting of the Board, and the Board may confirm,
9 modify, or reject the opinion.

10 §406. Presentation of Requests

11 A request for an advisory opinion must be presented to the Board by the staff.
12 Following the presentation, the Board may decline the request, defer action
13 thereon pending further fact-finding, declare its opinion, or take the request under
14 advisement.

15 §407. Withdrawal

16 The Board may allow a request for an advisory opinion to be withdrawn if the
17 person who submitted the request provides written reasons for withdrawal that the
18 Board deems sufficient.

19 §408. Notification

20 The staff of the Board must mail the advisory opinion to the person who requested
21 the advisory opinion and all affected parties, including the governmental agency
22 involved, if any, within 10 days after issuing the opinion.
23

1 §409. Reconsideration

2 A person may file a request for reconsideration of an advisory opinion rendered
3 by the Board within 20 days from the date of mailing of the advisory opinion.

4 **Chapter 5. Complaints**

5 §501. Who May File a Complaint.

6 Any person may file a complaint concerning violations of this article with the
7 Board.

8 §502. Dating and Docketing

9 The staff must note on each complaint the date of its receipt and must maintain a
10 docket upon which each complaint must be given an appropriate caption and
11 number.

12 §503. General Requirements

13 A. The Board or Chair may receive signed sworn and non-sworn complaints as
14 well as anonymous complaints.

15 B. All complaints should be directed to the Ethics Review Board at its office
16 which is currently located at 525 St. Charles Avenue, New Orleans, Louisiana
17 70130. Any member of the Board, however, may receive a complaint and
18 thereafter shall immediately refer the complaint to the office of Ethics Review
19 Board. Any member of the Board may bring any matter within the Board's
20 jurisdiction to the attention of the Board on his or her own motion.

21 §504. Complaints

22 A. A complaint may be based upon firsthand knowledge, on other evidence, or on
23 information and belief. Unless submitted anonymously, it must be signed .

1 B. Upon consideration of a complaint, the Board may close the file, authorize an
2 investigation of the complaint, or take such other action as it deems appropriate,
3 including but not limited to referral of the complaint to another agency of either
4 the City, State or Federal government.

5 C. If the Board, upon receiving a complaint, not obviously unfounded or
6 frivolous, alleging facts indicating that a respondent may have engaged in ethical
7 misconduct within the Board's jurisdiction, shall authorize an investigation to
8 determine whether charges should be filed and a hearing should be held. The
9 Board may authorize such investigation on its own motion. An anonymous
10 complaint should not be investigated unless it states facts, not mere conclusions
11 that can be independently verified.

12 D. If the Board decides that a complaint does not constitute ethical misconduct in
13 violation of any law within its jurisdiction or of any regulations or orders issued
14 by the Board, the Board shall vote not to initiate an investigation. It must notify
15 the complainant that the Board declined to initiate an investigation and shall then
16 close the file.

17 §505. Consideration of Information Concerning Possible Violations

18 The Board may consider any matter that it has reason to believe may be a
19 violation of any law within its jurisdiction, including but not limited to, a notice or
20 report sent to the Board by the Inspector General, oral reports and reports in the
21 news media,. The Board may close the file, authorize an investigation, or take
22 such other action as it deems appropriate.

23

1 §506. Withdrawal

2 A. If a complainant wishes to withdraw the complaint prior to the Board's
3 commencement of its investigation, withdrawal may be allowed, but the Board
4 may, by majority vote of its members present and voting, determine the issues to
5 be of such importance as to warrant ordering the investigation in its own motion
6 and in the interest of the public welfare.

7 B. The Executive Director and/or General Counsel must notify the complainant
8 by mail, of the Board's decision with respect to the complainant's request for
9 withdrawal within 10 days after the vote occurs.

10 §507. Notification

11 A. The Board, through its General Counsel, shall send notice and a copy of a
12 complaint, by certified mail, to the respondent who is the subject of the complaint
13 within 30 days after the Board authorizes and refers the matter to investigation.

14 B. The Board, through its General Counsel, shall send, by certified mail, a copy of
15 the vote and explanation of the matter to the respondent who is the subject of a
16 complaint or other matter within 30 days after the vote occurs.

17 **Chapter 6. Investigations**

18 §601. Board Investigation

19 A. The Board may investigate any matter by gathering evidence it deems
20 appropriate, including but not limited to sending a letter of inquiry to the
21 respondent which may be incorporated in the §509 notice of the investigation,
22 and questioning both the respondent who is the subject of the complaint and

1 the complainant while conducting an investigation. All investigations must
2 remain confidential unless the Board decides that charges should be filed.

3 B. The investigation authorized by the Board shall be conducted by the Board's
4 General Counsel. The General Counsel may request assistance, in the course
5 of the investigation, from the Office of Inspector General.

6 C. The General Counsel or Executive Director must afford the person who is the
7 subject of the investigation 30 days from notification within which to respond.
8 The respondent shall sign any and all responses to a notice of investigation and/or
9 a letter of inquiry including when the respondent is represented by counsel and
10 counsel signs a letter in response,

11 §602. Investigation of Complaints

12 A. The Board may investigate any complaint it receives.

13 B. The Board may also investigate notices, reports or referrals from the Inspector
14 General reports in the news media, and any other matter that comes to the
15 Board's attention within its jurisdiction.

16 §603. Post-Investigation Procedures

17 When an investigation is completed and the report reviewed by the Board, the
18 Board shall decide whether (1) further investigation is necessary, (2) charges
19 should be filed and the case noticed for public hearing, (3) a consent opinion
20 should initially be offered prior to authorizing the filing of charges, or (4) the file
21 should be closed in order to serve the public interest or because no violation
22 occurred.

23

1 **Chapter 7. Consent Opinions**

2 §701. General

3 The Board may offer a consent opinion to a person alleged to have violated any
4 law within its jurisdiction.

5 §702. Procedures

6 If the Board decides to offer a consent opinion, the Chair may direct the staff to
7 prepare a draft that will be sent to the respondent who is the subject of the
8 allegation for acceptance, modification, or rejection. If the respondent who is the
9 subject of the allegation accepts the terms of the proposed consent opinion, then
10 the opinion will be placed on the Board's agenda for review. The Board may
11 reject a proposed consent opinion and take further appropriate action. If accepted
12 by the Board, the opinion will be published on the website of the Ethics Review
13 Board. If the subject of the allegation refuses the terms of the proposed consent
14 opinion, then the item must be placed upon the Board's agenda for further action.

15 **Chapter 8. Hearings**

16 §801. Private Hearings

17 The procedures governing a private hearing will be, to the extent practicable,
18 identical to public hearing procedures, except that a private hearing is closed to
19 the public.

20 §802. Initiating Public Hearings

21 A. A public hearing is initiated by order of the Board through the issuance of
22 charges.

23 B. The Board must fix the time and place of the public hearings.

- 1 C. The charges must contain:
- 2 1. The name of the person charged;
- 3 2. The date of the meeting at which the Board voted to file charges;
- 4 3. The allegations that will be explored at the public hearing and the
- 5 pertinent provisions of law alleged to have been violated;
- 6 4. The name of the trial attorney, if designated; and
- 7 5. The date, time, and location, if fixed, of the public hearing, or if not
- 8 fixed, a commitment that the Board will, in supplemental correspondence, inform
- 9 the person charged of the date, time, and location of the public hearing at least 30
- 10 days prior to the public hearing.

11 §803. Notice of Public Hearings

12 The Board must post notice of public hearings in compliance with the

13 requirements of the Open Meetings Law and on the Board's website.

14 §804. Continuance of Public Hearings

15 A. A matter fixed for public hearing and not reached or resolved may be

16 continued to another date by the Board.

17 B. The Board or the Chair may grant, with respect to any one or more respondents

18 involved, a continuance of any public hearing; in the Board's discretion, the

19 public hearing may proceed as to those respondents to whom no continuance was

20 granted.

21 C. With the Board's approval, a hearing may be continued by consent of all

22 interested parties.

23

1 §805. Procedures in Hearings

2 A. Except in the case of private hearings, all hearings conducted under the
3 provisions of this Chapter must be open to the public.

4 B. Respondents and witnesses are subject to cross-examination. Each member of
5 the Board may also examine and cross-examine any witnesses.

6 C. The Board may require that the respondent and trial attorney stipulate to all
7 undisputed facts.

8 D. Hearings to inquire into charges against a respondent shall proceed in the
9 following order, subject to change, which may include eliminating statements of
10 both the General Counsel, or other trial counsel for the Board, and the respondent,
11 in the discretion of the Chair:

12 (1) Brief opening statements by the General Counsel, or other trial counsel
13 for the Board, and the respondent whose conduct is the subject of the proceeding,
14 in that order;

15 (2) All proposed exhibits of both the General Counsel, or other trial
16 counsel for the Board, and the respondent whose conduct is the subject of the
17 proceedings, shall be numbered and marked, with a list of the exhibits attached.

18 All exhibits shall be introduced into evidence at the commencement of the
19 hearing, except in the case of objections to admissibility. The Chair may either
20 rule on any objection to the admissibility of one or more exhibits or defer the
21 ruling until a later specific time in the proceedings. When an audio or video tape
22 constitutes an exhibit, except in exigent circumstances (decided in the discretion

1 of the Chair), such tape must be introduced along with a transcription thereof
2 made by a certified court reporter.

3 (3) Presentation of evidence by the General Counsel, or other trial counsel
4 for the Board, and the respondent whose conduct is the subject of the proceeding,
5 in that order;

6 (4) Presentation of evidence by the General Counsel, or other trial counsel
7 for the Board, in rebuttal; and

8 (5) Argument by the General Counsel, or other trial counsel for the Board,
9 and by the respondent whose discipline is the subject of the proceeding and by the
10 General Counsel, or other trial counsel for the Board, in that order.

11 E. Testimony regarding the character of a respondent shall be taken solely by
12 affidavit except on a showing of good cause in the discretion of the Board, in
13 which case the Board may permit live testimony.

14 F. If the General Counsel has investigated a particular case and/or will be the trial
15 counsel relative to any charges pending before the Board, (s)he shall not be
16 present during any deliberations of the Board with respect to (i) the Board's
17 decision to file charges, (ii) the Board's deliberations after a hearing on charges
18 and whether to impose penalties or other sanctions, or (iii) any other decision
19 pertaining to a particular respondent following the filing of charges;

20 G. The General Counsel or trial counsel for the Board shall not engage in ex
21 parte communications with the Board as a whole or with any individual Board
22 member as to a complaint against a respondent from the time charges are filed and
23 so long as any such matter remains pending before the Board, except as may be

1 necessary for scheduling purposes. Both the General Counsel or trial counsel for
2 the Board and the members of the Board shall take all necessary steps to avoid
3 such ex parte communications.

4 H. When a pending matter involves substantially the same question of law or fact
5 as presented in a prior public hearing, the Board may admit as evidence any part
6 of the record of such previous public hearing as the Board or Chair deems
7 relevant. However, in the application of this Rule, neither the respondent nor the
8 trial attorney may be deprived of the right to cross-examine any adverse witness.

9 I. The Board may invite any member of the Louisiana State Bar Association to
10 present oral or written argument on any question of law. An oral argument may be
11 presented at a hearing when all parties have had the opportunity to be present or
12 represented. A written argument must be served on all parties or their counsel.

13 §806. Evidence

14 A. The Chair has power to rule on procedural and evidentiary matters, unless the
15 Board approves a motion to overrule the decision of the Chair.

16 B. The Board may limit corroborative evidence.

17 C. When a ruling is made excluding evidence, counsel may dictate into the record
18 as a proffer the facts to be proven if the excluded evidence had been admitted, and
19 that proffer will be made available to be considered in the event of appellate
20 review.

21 D. The charges may be revised to conform to the evidence admitted, even if this
22 revision goes beyond the scope of the original complaint.

23 E. The Board must give effect to the rules of privilege recognized by law.

1 F. All evidence of which the Board desires to avail itself, including records and
2 documents in the possession of the Board, must be offered and made a part of the
3 record. Documentary evidence may be received in the form of copies or excerpts
4 or by incorporation by reference. In case of incorporation by reference, the
5 materials so incorporated must be available for examination by the parties before
6 being received in evidence.

7 G. The Board may take notice of judicially cognizable facts, federal census data,
8 and such other matters as may be deemed appropriate.

9 H. The Board may take notice of the provisions of any law within its jurisdiction
10 without the necessity of an offer in evidence.

11 I. To support a finding of ethical misconduct and the imposition of penalties or
12 other sanctions by the Board, the facts alleged in the Charge shall establish the
13 grounds therefore by the standard of clear and convincing evidence.

14 §807. Subpoena of Witnesses and Production of Evidence

15 A. The Board has the power to order the appearance of witnesses and to compel
16 the production of evidence pertinent to the issues involved in any public hearing.

17 B. A respondent may apply for a subpoena to require that a witness appear at a
18 public hearing. The application must be received in writing, at least 10 days
19 before the date fixed for the hearing, and must give the name and physical address
20 of the witness to whom the subpoena is directed.

21 C. In lieu of the issuance and service of formal subpoenas to public employees,
22 the Board may request any public entity or official to order any designated
23 employee under its supervision to attend and testify at any public hearing.

1 D. A respondent desiring the production of evidence at a public hearing must
2 apply for an appropriate order. The application must be received in writing, at
3 least 10 days before the date fixed for the hearing. The application must describe
4 the evidence to be produced in sufficient detail for identification, must give the
5 full name and physical address of the person required to make such production,
6 and must include certification by the respondent or counsel regarding the
7 materiality of production to the issues.

8 E. A subpoena duces tecum must be returnable at the public hearing or at such
9 earlier date, time, and place as specified therein.

10 F. Authenticated copies of books, papers, photographs, or other items in the
11 custody of any agency of the state, or any subdivision thereof, that have been
12 subpoenaed may be admitted in evidence with the same effect as the originals, but
13 if original books, papers, photographs, or other items are subpoenaed, they must
14 be produced and made available for inspection, even though authenticated copies
15 may be subsequently introduced.

16 G. The Board or its Chair may issue an appropriate order at any time recalling any
17 subpoena, subpoena duces tecum, or request issued under the provisions of this
18 rule. The respondent may likewise obtain an order from the Board recalling any
19 subpoena, subpoena duces tecum, or request issued or caused to be issued by the
20 respondent.

21 §808. Sequestration of Witnesses

22 The Board may order that the witnesses in any hearing be sequestered on its own
23 motion or if requested by a respondent or the General Counsel, or other trial

1 counsel for the Board. This rule does not preclude a respondent from hearing the
2 testimony of any other witnesses. If so ordered, all witnesses must be
3 administered an oath and admonished not to discuss their testimony until the
4 conclusion of the proceeding, except with counsel.

5 §809. Summary Disposition of Charges

6 A. At any time after the Board has filed a charge, a respondent may file a written
7 request for summary disposition with the Board on any of the following grounds:

- 8 1. The Board lacks jurisdiction of the subject matter, or of the respondent;
- 9 2. The charges have not been initiated in the manner prescribed by the
10 Rules;
- 11 3. The charges, if true, would not constitute an ethics violation under local
12 or state law.
- 13 4. The time in which to commence action as provided by any law within
14 the Board's jurisdiction has passed; or
- 15 5. The affidavits and other documents filed in connection with the charges
16 show that there is no genuine issue of material fact and that the respondent
17 is entitled to summary dismissal as a matter of law.

18 B. A request for summary disposition may be supported by sworn affidavits and
19 must be accompanied by written argument or brief. The Board shall require that
20 copies of the motion and affidavits be furnished to the General Counsel, or other
21 trial counsel for the Board and any other respondents, and shall permit opposing
22 motions and affidavits within a specified time.

1 C. When a request for summary disposition has been filed with the Board in any
2 proceeding, the General Counsel, or other trial counsel for the Board may submit
3 oral or written argument or brief in connection therewith and shall provide the
4 respondent or respondent's attorney with a copy thereof.

5 D. If the Board denies the request for summary disposition or refers it to the
6 merits, it may reconsider the summary disposition at any time.

7 E. The Board may summarily dispose of charges on any of the grounds listed
8 above at any time.

9 F. The Board must send to the respondent, by certified mail, a copy of the
10 decision within ten days after making the decision.

11 §810. Consolidation of Public Hearings

12 When public hearings of two or more respondents involve similar or related
13 circumstances, the Board may order a joint hearing of all respondents or may
14 order separate hearings for specified respondents, subject to objection by
15 respondent.

16 §811. Transcripts of Public Hearings

17 The proceedings of all public hearings must be recorded, but will be transcribed
18 only upon order of the Board or upon request made by a respondent therein,
19 accompanied by proffer of such cost as may be determined by the Board.

20 §812. Witness Fees in Public Hearings

21 A. The Board may order that a subpoenaed witness is entitled to receive the same
22 mileage and fees as are allowed witnesses in civil cases by local courts.

1 B. If a witness is subpoenaed by a respondent, the Board may order the witness
2 fees and mileage to be paid by respondent.

3 C. The Board may, before issuing a subpoena, require the party requesting the
4 subpoena to deposit with the Board a sum sufficient to cover the mileage costs
5 and witness fees pending a final determination of costs by the Board.

6 §813. Costs of Public Hearings

7 The Board may order the costs of any public hearing, or any portion of such costs,
8 including the costs of recording and transcribing testimony, to be paid by the
9 respondent depending on the outcome of the hearing, cooperation of the
10 respondent in the process, the severity and duration of the violation, and any other
11 matters determined necessary by the Board.

12 §814. Board Action Following Public Hearings

13 A. Following the close of a public hearing, the Board may either render its
14 decision or take the matter under advisement. The decision may be made orally by
15 dictating findings of fact and conclusions of law into the record or may be made
16 by written opinion. If the matter is taken under advisement, the Board has 90 days
17 to render a decision.

18 B. Except as otherwise specifically ordered by the Board, the decision of the
19 Board is final upon the date the decision is rendered.

20 C. The Executive Director must send, by certified mail, notice of the Board's
21 decision to the person charged and to the complainant within 10 days after the
22 Board's decision.

23

1 §815. Rehearings

2 A. The respondent may apply in writing to the Board for a rehearing within 20
3 days from the date of mailing the Board’s decision. The grounds for an
4 application for a rehearing are that:

- 5 1. The decision or order is clearly contrary to the law and the evidence;
- 6 2. The party has discovered, since the hearing, evidence important to the
7 issues which could not have been, with due diligence, obtained before or
8 during the hearing;
- 9 3. There is a showing that issues not previously considered ought to be
10 examined in order to properly dispose of the matter; or
- 11 4. There is other good ground for further consideration of issues and the
12 evidence in the public interest.

13 B. The application of the respondent for a rehearing must set forth the grounds
14 that justify such action and must be accompanied by a written brief or argument in
15 support thereof.

16 C. If the Board grants a rehearing, the Board must announce a time and place for
17 the rehearing. The rehearing must be confined to those grounds upon which the
18 rehearing was ordered.

19 **Chapter 9. Pre-hearing Procedures**

20 §901. Discovery

21 A. Any person who is to be the subject of a public hearing is entitled to the
22 following, upon written request to the Board at least 15 days prior to the date of
23 the scheduled hearing:

- 1 1. A certified copy of the transcript of the private hearing, if there was a
2 private hearing;
- 3 2. The name and address of each individual that the General Counsel, or
4 other trial counsel for the Board intends to call at the proposed hearing,
5 together with any written statements obtained by the General Counsel, or
6 other trial counsel for the Board from such persons; and
- 7 3. A copy of each physical document that the General Counsel, or other
8 trial counsel for the Board intends to introduce before the Board at the
9 proposed hearing.

10 B. The General Counsel, or other trial counsel for the Board and a respondent
11 may obtain discovery regarding a matter that is not privileged and that is relevant
12 to the pending public hearing. It is not ground for objection that the information
13 sought will be inadmissible at the hearing if the information sought appears
14 reasonably calculated to lead to the discovery of admissible evidence.

15 C. The General Counsel, or other trial counsel for the Board or a respondent may
16 take depositions on oral examination pursuant to the provisions of applicable
17 Code of Civil Procedure Articles of those persons whose names and addresses
18 have been furnished to the respondent. The taking of these depositions must not
19 unreasonably impede the scheduled hearing. The depositions may be admissible
20 in the public hearing, if ordered by the Board.

21 D. The General Counsel, or other trial counsel for the Board and any respondent
22 may serve upon each other written interrogatories, pursuant to the provisions of

1 applicable Code of Civil Procedure articles, to be answered by the party served
2 within 15 days of receipt.

3 §902. Motions and Exceptions

4 A. Motions and exceptions may be made before, during, or after a public hearing.
5 All motions and exceptions must be filed at least five days prior to the day when
6 the motion or exception is sought to be heard, except for good cause as
7 determined by the Board.

8 B. Motions and exceptions made before or after the public hearing must be in
9 writing and accompanied by a memorandum that sets forth a concise statement of
10 the grounds upon which the relief sought is based and the Board's legal authority
11 for granting the requested relief.

12 C. Motions and exceptions made during the course of the public hearing may be
13 made orally since they become part of the transcript of the proceedings.

14 §903. Pre-hearing Notices

15 A. By order of the Board and not less than 10 days prior to a public hearing, the
16 General Counsel, or other trial counsel for the Board and any respondent must
17 mutually exchange pre-hearing notices that set forth:

18 1. A brief but comprehensive statement of the party's contentions,
19 including a list of the legal authorities to be relied upon at the hearing in
20 support of the party's legal position.

21 2. A detailed itemization of all pertinent facts established by stipulations
22 and admissions.

23 3. A detailed itemization of the contested issues of fact.

1 4. A detailed itemization of the contested issues of law.
2 5. A list and brief description of all exhibits to be offered in evidence by a
3 party, identified by the exhibit number to be used at the hearing and
4 accompanied by the following:

5 (a) Stipulations as to the exhibit's authenticity or admissibility,
6 noted on the exhibit list;

7 (b) Copies of all documents to be offered in evidence, attached to
8 the notice.

9 6. A list of witnesses a party may call and a short statement as to the
10 nature of their testimony.

11 7. A statement as to any other matter not included in any of the previous
12 headings which may be relevant to a prompt and expeditious disposition
13 of the case.

14 B. Exhibits to be used for impeachment or rebuttal need not be included on the
15 list. No witnesses other than the witnesses listed may be called to testify, except
16 for good cause or for impeachment and rebuttal witnesses.

17 §904. Pre-hearing Conference

18 A. The Board may require the holding of a pre-hearing conference. General
19 Counsel, or other trial counsel for the Board and the respondent's counsel and if
20 the respondent is unrepresented, the respondent, shall appear at the specified time
21 and place to consider:

22 1. Simplification of issues;

- 1 2. Possibility of stipulations, admissions of fact, or introduction of
- 2 documents;
- 3 3. Limitations on witnesses; and
- 4 4. Such other matters as may be pertinent.

5 B. If a pre-hearing conference is held, the Board may issue an order setting forth
6 the actions that took place at the conference. This order controls the subsequent
7 course of the proceedings unless modified by further order for good cause and is
8 binding on all parties whether or not they were present at the conference.

9 **Chapter 10. Penalties**

10 §1001. Penalties for Violations; Criteria

11 A. After a public hearing and upon finding a violation of any law within its
12 jurisdiction, the Board may impose penalties or other sanctions consistent with the
13 provisions of any law within its jurisdiction and consistent with New Orleans City
14 ordinance Part II, Article VII, Division III, Sections 2-716 (Civil Penalties) and 2-
15 717 (Criminal Penalties).

16 B. In determining the amount of the penalty or the type of sanction to impose, the
17 Board may consider:

- 18 1. The nature, circumstances, extent, and gravity of the violation;
- 19 2. The degree of culpability of the person charged;
- 20 3. The person’s history of previous offenses;
- 21 4. The existence of prior notice that the described conduct was prohibited;
- 22 5. The person’s ability to pay;
- 23 6. The financial or other loss to the governmental entity;

1 7. The damage suffered by the governmental entity; and

2 8. Any other matters that justice requires.

3 C. Upon finding a violation of the Code or any other law within its jurisdiction,
4 the Board has 60 days in which to determine the proper penalty or sanction to
5 impose for such a violation.

6 D. The Board must notify the respondent, by mail, of the Board's decision with
7 respect to the assessment of penalties or other sanctions within 10 days of the
8 Board's final decision.

9 **Chapter 11. Records and Reports**

10 §1101. Custodian

11 The Executive Director is the custodian of all records, reports, and files of the
12 Board, including electronic reports and files.

13 §1102. Copies

14 A. The public may request and obtain copies of any public documents or reports,
15 of which the Board has custody, which are considered public under and in
16 compliance with the Louisiana Public Records Act.

17 B. The fees for such copies shall be determined by the fee schedule set by the
18 New Orleans City Council. Copying fees must be made in cash, money order,
19 certified check or business check. Personal checks will not be accepted.

20 §1103. Records and Reports; Accepting and Filing

21 A record or report submitted pursuant to this Chapter is considered accepted and
22 filed upon receipt by the staff or upon acknowledgment of receipt by the Board's
23 electronic filing system, unless the record or report is not in compliance with the

1 requirements established by this Chapter or by law. The name of a person
2 submitting records and reports that are accepted and filed must be listed on the
3 Board's agenda. The records and reports that are not in compliance with the
4 requirements established by this Chapter or by law must be placed upon the
5 Board's agenda for further action by the Board.

6 **Chapter 12. Electronic Records**

7 §1201. General

8 The Board recognizes the importance of immediate public access to publicly
9 disclosed information.

10 §1202. Methods of Filing

11 The Board may allow reports to be electronically filed via the Board website or
12 electronic mail.

13 §1203. Time of Filing

14 A record electronically filed is deemed timely if received electronically by
15 midnight at the end of the day on the filing deadline. The time of the Board's
16 system is controlling in the event of a dispute as to the time of receipt.

17 §1204. Refusal of Electronic Reports

18 The staff of the Board may refuse to accept for filing an electronic report that
19 contains a computer virus that could compromise the computer system of the
20 Board. The filer must be promptly notified of the refusal so that an alternative
21 method of delivery may be attempted.

22 **Chapter 13. Miscellaneous**

23 §1301. Relations with Inspector General

1 The Board and Inspector General will work in cooperation to enforce the City
2 Code of Ethics and promote public faith in government ethics.

3 §1302. Annual Report

4 The Board must prepare and submit an annual report to the City Council and
5 Mayor detailing the activities of the commission during the prior year. The format
6 for the report must be designed to maximize public and private understanding of
7 the commission's operations. The report may recommend changes to the text or
8 administration of this Chapter. Additionally, the annual report must be posted on
9 the website of the Board, and a copy must be sent to the Inspector General.

10 §1303. Review of Board Rules

11 The Board will periodically, no less than every five years, review substantive
12 provisions of the Code, the enforcement of the Code, and the Board's rules,
13 regulations, and administrative procedures to determine whether they promote
14 integrity, public confidence, and participation in city government and whether
15 they set forth clear and enforceable, common-sense standards of conduct. After at
16 least one public hearing, the Board may recommend legislative amendments to
17 the Code or any other provision of law necessary to enhance the ethical conduct
18 of public affairs.

19 §1304. Method of Amendment

20 These rules may be amended by a majority vote of the members of the Board at
21 any regular or special meeting of the Board for which proper notice has been
22 given under the Open Meetings Act, provided that each member has received a
23 copy of the proposed rule change at least 72 hours before the meeting. In the

1 event of an emergency, the Board may amend its rules by a two-thirds vote of
2 members present and voting, but such change must be ratified at the next regular
3 or special meeting of the Board in accordance with procedures as stated in the
4 preceding sentence.