

**RULES OF PROCEDURE FOR APPEAL HEARINGS**

of the

**KING COUNTY BOARD OF ETHICS**

Effective July 17, 1998  
As Amended Effective November 17, 2000  
As Amended Effective September 20, 2008

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## 1.0. INTRODUCTION

1.1 Under the King County Code of Ethics, K.C.C. chapter 3.04, the Ombudsman is responsible for investigating complaints alleging violations of the Code of Ethics and, if appropriate, issuing orders of reasonable cause to believe that respondents violated provisions of the Code of Ethics. Respondents aggrieved by such orders issued by the Ombudsman may request appeal hearings before the King County Board of Ethics under K.C.C. 3.04.057.

1.2 The Board of Ethics is authorized by K.C.C. 3.04.130 to implement forms, processes and procedures necessary to comply with the provisions of the Code of Ethics and promulgate rules governing the conduct of contested cases in compliance with the Rules of County Agencies, K.C.C. chapter 2.98.

1.3 At its meeting on April 21, 1998, the Board of Ethics determined the following: (1) appeals hearings under K.C.C. 3.04.057 are contested cases as defined in K.C.C. 2.98.020; (2) rules of procedure governing the conduct of appeals hearings are necessary and in the public interest; and (3) emergency rules of procedure should be adopted until regular rules of procedure can be promulgated, thereby ensuring there are rules of procedure in effect in the event a respondent files a request for an appeal hearing. Based thereon, the board adopted emergency rules of procedure effective upon filing with the Clerk of the Council which was April 22, 1998. Pursuant to K.C.C. chapter 2.98, the emergency rules of procedure shall be effective for no longer than ninety days from the date of filing.

1.4 By motion adopted June 15, 1998, the Board of Ethics adopted the following rules of procedure and directed the ethics administrator to file the rules of procedure with the Clerk of the Council as prescribed by K.C.C. chapter 2.98.

1.5 By motion adopted October 16, 2000, the Board of Ethics adopted amendments to the rules of procedure to establish procedures for withdrawals of requests for appeal hearings and directed the ethics administrator to file the amended rules of procedure with the Clerk of the Council as prescribed by K.C.C. chapter 2.98.

1.6 At its meeting on June 16, 2008, the Board of Ethics determined that rules of procedure for appeal hearings are out-of-date due to location move and other operational matters and that they should be made current. By motion adopted on August 18, 2008, the board adopted amendments to the rules of procedure for appeal hearings and directed the executive director to file amended rules of procedure with the Clerk of the Council as prescribed by K.C.C. chapter 2.98.

## 2.0 PURPOSE OF THE APPEAL HEARING

2.1 Upon the timely filing of a proper request, the Board of Ethics will conduct an appeal hearing for the purpose of affirming, denying or modifying an Ombudsman's order of reasonable cause.

2.2 The Board of Ethics will conduct an independent review of the allegations and facts, and apply the provisions of the Code of Ethics. The board will review whether the Ombudsman's order is supported by substantial evidence and whether the Ombudsman properly interpreted or applied the Code of Ethics. The board will hear evidence and make its

own determination regarding whether the respondent violated one or more provisions of the Code of Ethics and may affirm, deny or modify the Ombudsman's order of reasonable cause.

### 3.0 DEFINITIONS

Except as provided otherwise herein, the definitions set forth in K.C.C. chapter 3.04 shall apply under these Rules of Procedure.

3.1 "Code of Ethics" means the provisions of K.C.C. chapter 3.04.

3.2 "Ethics Administrator and/or Executive Director" means the county employee who works for and under the direction of the Board of Ethics.

3.3 "Order of reasonable cause" means an order of reasonable cause to believe that the respondent has violated one or more provisions of the Code of Ethics, which order has been issued by Ombudsman pursuant to K.C.C. 3.04.055.

3.4 "Party" means the respondent and the Ombudsman.

### 4.0 REQUESTING AN APPEAL HEARING AND NOTIFICATION PROCEDURES

4.1 A respondent against whom an order of reasonable cause has been issued must request an appeal hearing within twenty days after service of the order on the respondent. The Ombudsman shall provide documentation to the Board of Ethics related to the date of service on the respondent.

4.2 The commencement date of the twenty-day period shall be determined as follows. If the Ombudsman's order is served on the respondent, the twenty-day period shall commence on the date of service on the respondent. If the Ombudsman's order is mailed by the method specified in the Code of Ethics, the twenty-day period shall commence on the date set forth on the return receipt. The Board of Ethics shall resolve any issues related to the commencement of the twenty-day period.

4.3 The request for an appeal hearing must be in writing and shall cite the order appealed from, specify with particularity the findings being contested, and be filed with the executive director. In the event the executive director is not available to accept the request for an appeal hearing, the request shall be filed with the chair of the Board of Ethics. The respondent shall provide a copy of the request for an appeal hearing to the Ombudsman.

4.4 The written request for an appeal hearing shall be deemed timely filed if it is received by and in the possession of the executive director or chair of the Board of Ethics, as applicable, within the twenty-day period or if it is mailed and the postmark date on the envelope is within said twenty-day period. The Board of Ethics shall resolve any issues related to whether a request has been timely filed.

4.5 The executive director shall immediately notify, both by telephone and in writing, all members of the Board of Ethics and board counsel of receipt of the request for an appeal hearing. The executive director shall also provide written notification to the Ombudsman, the County Executive and the chair of the County Council of receipt of the request for an appeal hearing.

## 5.0 EX PARTE COMMUNICATION

5.1 No member of the Board of Ethics other than the presiding officer shall communicate, directly or indirectly, with any party or other person, except the executive director and the deputy assigned by the Prosecuting Attorney to serve as the board's legal adviser, outside of the appeal hearing regarding any issue related to the appeal hearing without first consulting with the presiding officer and then providing notice and opportunity for all parties to participate.

5.2 No person having knowledge that a request for an appeal hearing has been filed and no party to an appeal hearing shall communicate, directly or indirectly, with any member of the Board of Ethics, other than the presiding officer, outside of the appeal hearing.

5.3 A member of the Board of Ethics who receives an ex parte communication in violation of this section shall place on the record of the pending appeal hearing all written communications received, all written responses made, a memorandum stating the substance of all oral communications received and responses made, and the identity of each person from whom the board member received an ex parte communication. The board member shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party or other person involved in such ex parte communication desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the appeal hearing unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted by the presiding officer.

5.4 If necessary to eliminate the effect of an ex parte communication received in violation of this section, a member of the Board of Ethics who receives the communication may be disqualified from participation in the appeal hearing, and the portions of the record pertaining to the communication may be sealed by protective order issued by the presiding officer.

## 6.0 DISQUALIFICATION AND RECUSAL

6.1 A member of the Board of Ethics, and the presiding officer if the presiding officer is not a member of the board, shall be subject to disqualification for bias, prejudice, interest, or any other good cause. Immediately upon becoming aware of facts or circumstances supporting disqualification, a party shall file with the chair of the board a motion of disqualification against any member of the board or the presiding officer. Unreasonable delay in filing such a motion, as determined by the board, shall result in denial of the motion by the board.

6.2 Upon a party's motion for disqualification, the member of the board or presiding officer against whom the motion was filed shall consider the motion and determine whether to disqualify himself or herself. A determination not to disqualify oneself may be overturned by a favorable vote of at least three members of the board.

6.3 Members of the Board of Ethics shall recuse themselves whenever they determine they have irreconcilable conflicts of interest or the appearance of such conflicts of interest. A member of the board shall accomplish recusal by filing a written notice of recusal

with the chair of the board. Such written notice shall include sufficient details to enable the chair to understand the basis for recusal.

## 7.0 PRESIDING OFFICER

7.1 The functions of the presiding officer shall be to manage the proceedings and make determinations on behalf of the Board of Ethics and in accordance with these rules of procedure, and to afford all parties the opportunity to effectively participate in the appeal hearing process.

7.2 Upon receiving notification that a request for an appeal hearing has been filed with the Board of Ethics, the chair of the board shall in writing either designate a member of the board or recommend a person other than a member of the board to serve as presiding officer for the appeal hearing. The chair shall provide a copy of the written designation or recommendation to all other members of the board. The designation of a member of the board by the chair shall stand unless overturned as provided in paragraph 7.3. The recommendation for a person other than a member of the board to serve as presiding officer shall be considered in accordance with paragraph 7.3.

7.3 At a special meeting called before the next regularly scheduled meeting of the Board of Ethics or at the next regularly scheduled meeting of the board, by a favorable vote of at least three members of the board, the chair's designation of a member of the board or recommendation of a person other than a member of the board to serve as presiding officer may be overturned. The board, by a favorable vote of at least three members of the board, may designate a different member of the board or a person other than a member of the board to serve as presiding officer for the appeal hearing.

7.4 The Board of Ethics may at anytime during the appeal hearing process remove the presiding officer by a favorable vote of at least three members of the board and may designate a different member of the board or a person other than a member of the board to serve as presiding officer for the remainder of the appeal hearing process.

7.5 The chair of the board shall notify all parties in writing of the designation of a presiding officer, including any changes thereto.

## 8.0 GENERAL PROVISIONS

8.1 The presiding officer shall have full authority to make arrangements for reasonable accommodations for a party with a disability as defined under applicable King County ordinance and state law. Reasonable accommodations shall include, but not be limited to, extending time periods, except the time period for filing the request for an appeal hearing, requiring production of documents in accessible format, appointing an interpreter, and similar actions. The presiding officer shall have full authority to appoint an interpreter to assist a non-English-speaking or limited English-speaking party or witness throughout the appeal hearing. The presiding officer shall be governed by the provisions of Chapters 2.42 and 2.43 RCW in actions related to interpreters.

8.2 In computing any period of time prescribed or allowed in these rules of procedure, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday under King County ordinance, in which event the period

runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday under King County ordinance. Days shall be calendar days.

8.3 Each party shall comply with the following requirements related to filing and service of papers:

8.3.1 After the filing of the request for an appeal hearing, all subsequent notices, pleadings, and other papers shall be filed with the presiding officer or the chair of the board, as applicable, and shall be served upon all counsel and representatives of record and upon nonrepresented parties or upon their agents designated by them or by law.

8.3.2 Service shall be made personally; by first class, registered, or certified mail; by telegraph; by electronic telefacsimile transmission and same-day mailing of copies; or by commercial parcel delivery service.

8.3.3 The presiding officer shall resolve any issues related to whether service by one party on the other was in compliance with these rules of procedure.

8.4 The Board of Ethics may issue subpoenas to command a person to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set forth on the subpoena. Subpoenas shall be served as provided in state law. Subpoenas may require the production of any records relevant or material to the appeal hearing except information that is legally privileged or otherwise protected by law from disclosure. The Board of Ethics shall consider and make determinations on objections to compliance with subpoenas. The Board of Ethics will seek the assistance of the Prosecuting Attorney in enforcing subpoenas.

8.5 The Board of Ethics will conduct appeal hearings as open meetings unless state law expressly authorizes closure of all or a portion of the hearings. Appeal hearings will be considered special meetings of the Board of Ethics and notice provided accordingly.

8.6 For failure or neglect by either party to participate in any of the proceedings under these rules of procedure, the Board of Ethics may issue a default and dismissal order against the non-participating party.

8.7 Except as state law provides otherwise, the request for an appeal hearing and all subsequent notices, pleadings, and other papers filed in furtherance of the appeal hearing shall be made available for inspection and copying upon request by the public. Such requests shall be submitted to the executive director, who shall consult with the presiding officer before responding thereto.

## 9.0 SCHEDULING AND NOTICE OF PREHEARING CONFERENCE AND APPEAL HEARING

9.1 If a prehearing conference will be conducted as provided in these rules of procedure, the presiding officer will schedule the date for the conference and notify the parties at least ten days prior to the conference. The presiding officer will schedule the appeal hearing for a date approximately thirty days following the date of the prehearing conference.

9.2 If a prehearing conference will not be conducted, the presiding officer will schedule an appeal hearing for a date within forty-five days following the date of the filing of the request for the appeal hearing.

9.3 At the direction of the presiding officer, the executive director will consult with the respondent and Ombudsman on their preferred dates for the prehearing conference, if applicable, and the appeal hearing. While efforts will be made to accommodate the preferences of the parties, the presiding officer shall have the final authority to schedule the prehearing conference, if applicable, and the appeal hearing.

9.4 At any time prior to the date scheduled for the prehearing conference or the appeal hearing, the presiding officer, on his or her own motion or upon the request of either party and with prior notice to the parties, may order a postponement of the prehearing conference or the appeal hearing.

## 10.0 PREHEARING CONFERENCE

10.1 The presiding officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

10.1.1 simplification of the issues;

10.1.2 necessity or desirability of additional pleadings or amendments to the pleadings, as applicable;

10.1.3 possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents that will avoid unnecessary proof at the hearing;

10.1.4 requests for the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of superior court. Such procedures may be used only upon a showing of necessity and unavailability by other means. The presiding officer may authorize depositions to be taken of any elected official of King County only with the prior authorization of at least three members of the Board of Ethics;

10.1.5 limitations on the number and consolidation of the examination of witnesses;

10.1.6 procedural matters;

10.1.7 distribution of written testimony and exhibits to the parties prior to the appeal hearing; and

10.1.8 other matters to aid in the presentation of the appeal.

10.2 To request a prehearing conference, a party shall file a written request within fourteen days after the date the respondent filed the request for an appeal hearing.

10.3 The presiding officer may conduct prehearing conferences by telephone, teleconference, or other electronic means. Each party must have an opportunity to participate

in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place. The presiding officer shall grant the motion of any party showing good cause for having the conference conducted in person at a rescheduled time and location.

10.4 The presiding officer may order that all documentary evidence that is to be offered during the appeal hearing be submitted to the presiding officer and the other party sufficiently in advance of the appeal hearing, as determined by the presiding officer, to permit study and preparation of cross-examination and rebuttal evidence. Documentary evidence not submitted in advance of the appeal hearing as required herein shall only be received in evidence if the party failing to so submit the evidence demonstrates good cause for such failure, except that such evidence may be submitted for impeachment purposes. The authenticity of all documents submitted in advance shall be deemed admitted unless written objection thereto is filed within ten days prior to the appeal hearing, except a party will be permitted to challenge such authenticity at a later time if the party demonstrates good cause for failure to have filed such written objection. When portions only of a document are to be relied upon, the offering party shall identify the pertinent excerpts. Only the excerpts, in the form of copies, shall be received in the record. However, a copy of the whole of the original documents, except any portions containing confidential or privileged material protected by law, shall be made available for examination and for use by all parties.

10.5 Following the prehearing conference, the presiding officer shall issue a written order reciting the issues discussed at the conference and the presiding officer's rulings. The written order shall be delivered to each party. If no objection to such order is filed within ten days after the date of delivery, the order shall control the subsequent conduct of the appeal hearing unless modified for good cause by subsequent order.

10.6 The presiding officer may, in his or her discretion, conduct a conference prior to the taking of testimony at the appeal hearing for the purpose of carrying out this prehearing conference rule.

## 11.0 REVIEW OF PROCEDURAL DECISIONS OF PRESIDING OFFICER

11.1 A party may file with the chair of the Board of Ethics a petition for review of any decision issued by the presiding officer prior to the commencement of the appeal hearing. The petition for review shall be filed within seven days after the party has knowledge of the decision of the presiding officer. For decisions of the presiding officer made within seven days of the appeal hearing date, the petition for review shall be presented at the appeal hearing. The petition for review shall identify the portions of the decision of the presiding officer to which exception is taken, explain the reasons for taking exception, and state the remedy requested. A copy of the petition for review shall be served on the other party or their representative at the time the petition is filed with the chair of the board. The other party may file with the chair of the board a reply to the petition for review. The reply shall be filed within seven days of the date of service of the petition.

11.2 A party may object to any decision of the presiding officer made during the appeal hearing by noting such objection on the record. The other party shall have an opportunity to make a statement on the record in support of or opposition to the objection.

11.3 The Board of Ethics shall determine what action to take on each petition for review and objection.

## 12.0 CONDUCT OF THE APPEAL HEARING

12.1 The parties to the hearing will be the respondent and the Ombudsman.

12.2 Pursuant to K.C.C. 3.04.057, the Board of Ethics shall have the power to administer oaths and affirmations, issue subpoenas, compel attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records relevant or material to the hearing.

12.3 The presiding officer shall issue a notice of an appeal hearing to each party and other persons who have requested such notice at least seven days prior to the date of the hearing. The notice shall include the following information:

12.3.1 The names and addresses of the parties;

12.3.2 The names and addresses of the representatives of the parties;

12.3.3 A statement of the time, place and nature of the hearing, including whether the hearing will be conducted in person, by telephone conference call or otherwise;

12.3.4 A short and plain statement of the matters asserted by the parties; and

12.3.5 A reference to the authority under which the hearing will be held.

12.4 There shall be a verbatim record kept of the hearing. Such record may be made by manual, electronic, tape or other type of recording device, as determined by the presiding officer.

12.5 The Ombudsman shall have the burden of proving by a preponderance of the evidence that the respondent violated one or more provisions of the Code of Ethics.

12.6 Each party shall have the following rights:

12.6.1 To call and examine witnesses on any matter relevant to the issues raised by the order of the Ombudsman;

12.6.2 To introduce documentary and physical evidence;

12.6.3 To cross-examine opposing witnesses on any relevant matter;

12.6.4 To impeach any witness regardless of which party first called the witness to testify;

12.6.5 To rebut evidence against him or her; and

12.6.6 To represent himself or herself, or to be represented by anyone of his or her choice who is lawfully permitted to do so.

12.7 During the hearing, the presiding officer shall have authority to:

12.7.1 Determine the order of presentation of the evidence;

12.7.2 Administer oaths and affirmations;

12.7.3 Rule on procedural matters, objections and motions;

12.7.4 Rule on offers of proof and receive relevant evidence;

12.7.5 Ask questions of witnesses, regardless of which party called the witnesses, in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

12.7.6 Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

12.7.7 Take any appropriate action necessary to maintain order during the hearing;

12.7.8 Permit or require oral argument or briefs and determine the time limits for submission thereof;

12.7.9 Waive any requirement of these rules of procedure unless a party shows that it would be prejudiced by such a waiver; and

12.7.10 Take any other action necessary to assist the Board of Ethics in its consideration of the appeal.

12.8 With respect to evidence, the following provisions shall apply:

12.8.1 The presiding officer may admit evidence, including hearsay evidence, if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in Washington State courts. The presiding officer shall also exclude evidence that is irrelevant, immaterial, or unduly repetitious.

12.8.2 The presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings, unless inconsistent with subparagraph 12.8.1.

12.8.3 The Board of Ethics may take notice of judicially cognizable facts and of general, technical, or scientific facts within the knowledge of the members of the board in the evaluation of the evidence presented to the Board of Ethics; provided that the Board of Ethics shall notify the parties during the hearing or by reference in a preliminary determination of the material so noticed. Each party shall have the opportunity to contest the facts so noticed.

12.8.4 The refusal of a witness to answer any question which has been ruled to be proper by the presiding officer may, in the discretion of the presiding officer, be ground for striking all testimony previously given by such witness on related matter.

12.8.5 Any party bound by a stipulation or admission of record may, at any time prior to closure of the appeal hearing, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of the other party.

12.9 Every person called as a witness in an appeal hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060.

12.10 If the appeal hearing is open to the public, the presiding officer shall permit mass media photographic and recording equipment at the hearing unless the presiding officer is unable to impose or gain compliance with such conditions upon their use as the presiding officer deems necessary to prevent disruption of the appeal hearing.

12.11 The record in an appeal hearing shall include the following items. Except to the extent provided otherwise by law, the hearing record constitutes the exclusive basis for action by the Board of Ethics.

- 12.11.1 the request for an appeal hearing;
- 12.11.2 all pleadings, motions, intermediate rulings, and prehearing rulings or orders;
- 12.11.3 notices of all proceedings;
- 12.11.4 evidence received and considered;
- 12.11.5 a statement of matters officially noticed;
- 12.11.6 questions and proffers of proof, objections, and rulings thereon;
- 12.11.7 the recording prepared at the hearing;
- 12.11.8 matters placed on the record related to ex parte communications;
- 12.11.9 decisions, opinions, and reports by the presiding officer; and
- 12.11.10 the findings, conclusions and final order of the Board of Ethics.

### 13.0 DETERMINATION ON APPEAL

13.1 Within a reasonable time following the appeal hearing, the Board of Ethics shall enter written findings and conclusions in the form of a final order. The board's decision shall be based on a preponderance of the evidence.

13.2 The determination and final order of the Board of Ethics shall identify the name of the proceeding, designate all parties and representatives participating in the appeal hearing, include a concise statement of the nature and background of the hearing, contain findings of fact, contain conclusions, and contain a final order disposing of all contested issues and

affirming, modifying or reversing the reasonable cause order, or portions thereof, of the Ombudsman.

13.3 The Board of Ethics shall cause a copy of its findings and conclusions to be served or mailed, by certified mail, return receipt requested, to the Ombudsman and the respondent. The board shall cause the original of its final order to be filed with the county Records and Licensing Services Division. The board shall provide copies of its final order to the highest ranking supervisor of the respondent, the Office of the Prosecuting Attorney, and the complainant.

#### 14.0 DISCLOSURE OF FINAL ORDER

14.1 The final order of the Board of Ethics shall be a public record and available for public review and copying. Copies shall be available to any person upon payment of charges established by King County.

#### 15.0 DISPOSITION OF RECORD

15.1 The appeal hearing record, including all evidence and exhibits, shall be retained in the office of the Board of Ethics.

15.2 If the Board of Ethics is satisfied regarding records retention and maintenance procedures, original documents produced as exhibits shall be returned to the person producing each such document, and a copy, abstract, summary, or other memorandum of the nature and content of the document shall replace the document in the appeal hearing record. Otherwise, such original documents shall be retained by the Board of Ethics until all further appeal periods and subsequent litigation have expired or concluded.

#### 16.0 WITHDRAWAL OF REQUEST FOR APPEAL HEARING

16.1 A respondent may withdraw her or his request for an appeal hearing at any time by filing written notification of withdrawal with the chair of the Board of Ethics or the executive director.

16.2 The respondent shall provide a copy of the written notification of withdrawal to the Ombudsman.

16.3 Upon receipt of such written notification of withdrawal, the executive director shall notify the members of the Board of Ethics and other affected or interested persons of the withdrawal by the respondent. Receipt of such written notification of withdrawal shall moot the request for an appeal hearing.