

**MILWAUKEE COUNTY ETHICS BOARD**

**RULES OF PROCEDURES IN OPINIONS, COMPLAINTS AND INVESTIGATIONS**  
**(Pursuant to S. 9.09 to 9.12 County General Ordinances)**

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## **PREAMBLE**

WHEREAS, pursuant to Chapter 9 of the General Ordinances of Milwaukee County, the Milwaukee County Ethics Board was established to carry out the provisions of Chapter 9 – Code of Ethics; and

WHEREAS, among the duties listed in Section 9.08 –Duties of the Ethics Board, the Ethics Board is authorized to adopt guidelines and procedures necessary to carry out the provisions of this ordinance; and

WHEREAS, The Code of Ethics provides for opinion and complaint procedures and for the Ethics Board to make investigations, to determine probable cause by issuing findings, thereon, and to make referrals with recommendations and proposed discipline. The Ethics Board believes affected parties will be better served by a clarification of Board procedures relating to these activities; now, therefore,

BE IT RESOLVED, that the Milwaukee County Ethics Board adopts the following rules and guidelines of procedure for handling opinions, complaints, making investigations, determining probable cause and making referrals thereon. In the event of any inconsistencies between the provisions of the Code of Ethics and the following rules and guidelines of procedure, then the provisions of the Code of Ethics shall control.

## RULE I

### THE ETHICS BOARD

The officers of the Milwaukee County Ethics Board (hereinafter referred to as "Board" or "Ethics Board") shall be a Chairperson and Vice-Chairperson. The officers shall all be voting members of the Board. Special meetings of the Board may be called by the Chairperson and by a minimum of three members of the Ethics Board upon written notice to the Executive Director of the Ethics Board. Four voting members shall constitute a quorum at any meeting, and any action by the Board shall require an affirmative vote of four members.

## RULE II

### ADVISORY OPINIONS

#### Section 1: Source and Form of Request

The Board shall accept a request for an Advisory Opinion, in writing (including electronic mail), from any person (personally or on behalf of an organization or governmental body) or any appointing authority regarding the propriety of any matter in which a prospective appointee is or may be engaged (with the consent of the prospective appointee). The Board shall only consider a request for Advisory Opinion when the issues raised in the request are relevant to the Ethics Code. In issuing an Advisory Opinion, the Board shall rely upon the facts made known to the Board in the request for the Advisory Opinion.

#### Section 2: Closed to Public Inspection, Not Public Record

Requests for Advisory Opinions, records obtained or filed in connection with the request and the actual Advisory Opinion shall be closed to public inspection and are not "public records" pursuant to Chapter 19 Wis. Stats. unless inclusion in the public record is requested by the person or organization requesting the Advisory Opinion or the person who is the subject of the Advisory Opinion. However, the Board may compile or publish summaries of Advisory Opinions so long as identifying information is redacted.

#### Section 3: Closed Session

The Board's deliberations and actions upon the request for an Advisory Opinion shall be held in closed session unless the person who is the subject of the Advisory Opinion requests, in writing, that the matter be heard and deliberated in open session.

#### Section 4: Form of the Advisory Opinion

The Advisory Opinion shall be in writing and provided by the Board to the requesting party.

Section 5: Time Limit on Action of Board

There is no time limit for action by the Board. However, the Board may authorize the Corporation Counsel to provide a Corporation Counsel Opinion where delay by the Board would cause a substantial inconvenience or be a detriment to a party requesting an Advisory Opinion.

**RULE III**

**FORMAL OPINIONS**

Section 1: Source of Request

The Board may issue a Formal Opinion, in writing, interpreting the Ethics Code or applying the Ethics Code to certain facts without a request from any person.

Section 2: Resolution of Board

The Board shall identify the issue that will be the subject of the Formal Opinion by resolution and upon adoption of the resolution, discuss the issue in a properly noticed meeting.

Section 3: Open to Public Inspection, Public Record

Formal Opinions shall be open for public inspection and included in the public record.

**RULE IV**

**CORPORATION COUNSEL OPINIONS**

Section 1: Source and Form of Request

The Board shall accept a request, in writing, from any person to obtain an Advisory Opinion from the Corporation Counsel regarding application of the Code to a set of circumstances. The Board shall only consider a request when the issues raised in the request are relevant to the Ethics Code.

Section 2: Closed to Public Inspection, Not Public Record

Requests for Corporation Counsel Opinions, records obtained or filed in connection with the request and the actual Corporation Counsel Opinion shall be closed to public inspection and are not "public records" pursuant to Chapter 19 Wis. Stats. unless inclusion in the public record is requested by the person or organization requesting the Corporation Counsel Opinion or the person who is the subject of the Corporation Counsel Opinion.

### Section 3: Board Authorizations to Corporation Counsel

The Board may authorize the Corporation Counsel to (i) provide a Corporation Counsel Opinion where delay by the Board would cause a substantial inconvenience or be a detriment to the party requesting an Advisory Opinion or (ii) request an advisory opinion from the Government Accountability Board when the issue presented is of interest to, or under the jurisdiction of, the Government Accountability Board.

### Section 4: Form of the Corporation Counsel Opinion

The Corporation Counsel Opinion shall be in writing and provided to the Board and the Board shall provide the Opinion to the requesting party.

### Section 5: Time Limit on Action of Board

There is no time limit for action by the Board or Corporation Counsel.

## **RULE V**

### **INVESTIGATION REQUESTS**

#### Section 1: Definition

Investigation Request: A written and signed statement, from a person stating that there are specific acts or omissions, by an identified person subject to the Code, from unverified sources, which appear prima facie to constitute a violation of the Code, and for which the requestor is seeking that an investigation be undertaken to determine whether a matter should be pursued under the Verified Complaint proceedings.

Any person, including the Executive Director or a member of the Board, may file an Investigation Request. The Executive Director and any Board member filing an Investigation Request shall be recused from consideration of the Investigation Request.

#### Section 2: Approval of Investigation Request and Referral to the District Attorney

The Investigation Request shall be approved by the Executive Director, in consultation with the Board Chairperson, if there appears to be prima facie evidence that a violation may have occurred. Prima facie evidence means such evidence that, if not disputed, would be sufficient to establish a violation of the Ethics Code.

If approved, a copy of the Investigation Request shall be provided to the District Attorney. The Ethics Board shall delay further action on the Investigation Request, if requested by the District Attorney.

If not approved, the matter shall be placed on the agenda of the next regularly scheduled Board meeting for consideration and final determination by the Ethics Board.

The Ethics Board has no jurisdiction over an Investigation Request until it is released by the District Attorney.

### Section 3: Notification to the Accused

Within 10 days of approving an Investigation Request, the Ethics Board shall forward to the subject of the Investigation Request a copy of the Investigation Request, and a general statement of the applicable Code provisions, unless delay is requested by the District Attorney.

### Section 4: Reviewed in Closed Session

The Ethics Board action upon any Investigation Request shall be in properly noticed meetings and held in closed session, unless the subject of the Investigation Request requests, in writing, that the matter be considered in open session.

### Section 5: Decision on Investigation Request

The Ethics Board shall consider the Investigation Request and determine whether probable cause exists to believe a violation of the Code occurred. The decision on any Investigation Request considered by the Ethics Board shall be in writing, filed with the Ethics Board, and provided to the subject of the Investigation Request.

A. No Potential for a Probable Cause Finding: If the Ethics Board determines that the Investigation Request does not produce facts sufficient to merit a conclusion that a violation of the Code has occurred, then the Ethics Board shall take no further action on the Investigation Request and shall notify the subject of the Investigation Request.

B. Potential for a Probable Cause Finding: If the Ethics Board finds a reasonable basis for belief that a violation of the Code might have occurred, then the Ethics Board shall schedule a preliminary conference in the closed session of a properly noticed Ethics Board meeting.

If the Ethics Board determines that the Investigation Request provides a basis for finding probable cause exists sufficient to constitute a violation of the Code, the Ethics Board may make, upon its own motion in closed session, a Verified Complaint.

### Section 6: Preliminary Conference

A. Notice: The Ethics Board shall notify both the person who filed the Investigation Request and the subject of the Investigation Request that a Preliminary Conference has been scheduled. The notice shall provide the nature and purpose of the Preliminary Conference and the activities to be discussed. The notice shall also advise the participants that they may bring evidence and witnesses.

B. Conferencing with Participants: The Ethics Board shall confer with each party separately. The person who submitted the Investigation Request shall meet with the Ethics Board first, followed by the subject of the Investigation Request. If the Ethics Board needs additional information, it may pursue it on its own. After obtaining all the information it needs, the Ethics Board will deliberate in closed session without any of the parties present.

C. Amendments: If the Ethics Board determines during the Preliminary Conference that other violations of the Code may have occurred, the Ethics Board may amend the Investigation Request upon its own motion.

#### Section 7: Preliminary Conference Outcomes

A. Dismissal: If the Ethics Board determines that probable cause does not exist to find a violation of the Code has occurred, or that the matter does not warrant further action, it shall dispose of the Investigation Request through written dismissal.

B. Dismissal with Conditions: If the Ethics Board determines during the Preliminary Conference that the subject of the Investigation Request recognizes that a minor violation of the Code has occurred, which has been rectified or will be rectified, the Ethics Board *may* enter into a stipulation with the subject of the Investigation Request, and shall issue a written dismissal of the Request on condition that the matter can be re-opened if similar or minor violations occur within three years. Any such stipulation will remain part of the closed record.

C. Order to Hearing: If the Ethics Board determines during the Preliminary Conference that the actions of the subject constitute significant violations of the Code it may, on its own motion, file a Verified Complaint and shall issue an order to proceed to the hearing process.

#### Section 8: Confidentiality

The Investigation Request must remain confidential until disclosure is permitted or required by the Code, unless the subject of the Investigation Request requests in writing that it be made part of the public record.

An Investigation Request is not a public record, unless the person who is the subject of the Investigation Request requests, in writing, that the matter be part of the public record.

The Ethics Board may compile or publish a summary of unsubstantiated Investigation Requests that are redacted to remove any information that would disclose the identity of any individual or organization.

No member or employee of the Ethics Board may make public the identity of the individual submitting the Investigation Request or the individual/organization mentioned in the Investigation Request.

## **RULE VI**

### **VERIFIED COMPLAINTS**

#### Section 1: Definition

Verified Complaint: A written statement from a person, given under oath, and subscribed before a notary public or other official authorized to administer oaths, alleging specific acts or omissions constituting a violation of the Code, committed by an identified person subject to the Code.



Any person, including the Executive Director or member of the Board, may file a Verified Complaint. The Executive Director and any Board member filing a Verified Complaint shall be recused from consideration of the Verified Complaint.

If the Ethics Board determines that an Investigation Request provides a basis for finding probable cause exists sufficient to constitute a violation of the Code, the Ethics Board may make, upon its own motion in closed session, a Verified Complaint.

If the Ethics Board determines during the Preliminary Conference of an Investigation Request that the actions of the subject constitute significant violations of the Code, the Ethics Board shall, on its own motion, file a Verified Complaint.

#### Section 2: Timely Filed

No Verified Complaint may be filed later than three years after the alleged violation of the Code.

#### Section 3: Referral to the District Attorney

After filing with the Ethics Board, a copy of the Verified Complaint shall be provided to the District Attorney. The Ethics Board shall not act on the Verified Complaint, if delay is requested by the District Attorney. The Ethics Board may review the Verified Complaint when released by the District Attorney.

The Ethics Board has no jurisdiction over a Verified Complaint until it is released by the District Attorney.

#### Section 4: Notification to Accused

Within 10 days of receiving a Verified Complaint, the Ethics Board shall provide the subject of the Verified Complaint a copy of the complaint and a general statement of the applicable Code provisions, unless delay is requested by the District Attorney.

#### Section 5: Decision on Verified Complaint

A decision on a Verified Complaint shall be in writing, provided to the subject of the complaint, and filed with the Ethics Board.

- A. No Potential for a Probable Cause Finding: If the Ethics Board determines that the Verified Complaint does not produce facts sufficient to merit a conclusion that a violation of the Code has occurred it shall dismiss the complaint, and notify the subject and author of the Verified Complaint.
- B. Potential for a Probable Cause Finding: If the Ethics Board determines there is a reasonable basis for belief that a violation of the Code may have occurred, the Ethics Board shall schedule a preliminary conference in the closed session of a properly noticed Ethics Board meeting.

## Section 6: Preliminary Conference

A. Notice: The Ethics Board shall notify both the person who filed the Verified Complaint and the subject of the Verified Complaint that a Preliminary Conference has been scheduled. The notice shall provide the nature and purpose of the Preliminary Conference and the activities to be discussed. The notice shall also advise the participants that they may bring evidence and witnesses.

B. Conferring with Participants: The Ethics Board shall confer with each party separately. The person who submitted the Verified Complaint shall meet with the Ethics Board first, followed by the subject of the Verified Complaint. If the Ethics Board needs additional information, it may pursue it on its own. After obtaining all the information it needs, the Ethics Board shall deliberate in closed session without any of the parties present.

C. Amendments: If the Ethics Board determines during the Preliminary Conference that other violations of the Code may have occurred, the Ethics Board may amend the Verified Complaint upon its own motion.

## Section 7: Preliminary Conference Outcomes

A. Dismissal: If the Ethics Board determines that probable cause does not exist to find a violation of the Code has occurred, or that the matter does not warrant further action, it shall dispose of the Verified Complaint through written dismissal.

B. Dismissal with Conditions: If the Ethics Board determines during the Preliminary Conference that the subject of the Verified Complaint recognizes that a minor violation of the Code has occurred, which has been rectified or will be rectified, the Ethics Board *may* enter into a stipulation with the subject of the Verified Complaint, and shall issue a written dismissal of the Complaint on condition that the matter can be re-opened if similar or minor violations occur within three years. Any such stipulation will remain part of the closed record.

C. Order to Hearing: If the Ethics Board determines during the Preliminary Conference that the actions of the subject constitute violations of the Code it shall issue an order to proceed to a hearing for determination of whether a violation of the Code has occurred.

## Section 8: Pre-Hearing Process

A. Notice and Copy of Order: The Ethics Board shall mail a copy of the Order to Hearing to the subject of the Verified Complaint. The notice shall include the written motion, a general statement of the applicable provisions of the Ethics Code, and the date set for hearing. Service of the notice is complete upon mailing.

B. Hearing within 30 days: The hearing shall be commenced within 30 days after the date it is ordered unless the subject(s) of the Verified Complaint requests, in writing, a later date and the Board consents in writing.

C. Discovery: The subject of the Verified Complaint is entitled to reasonable discovery rights, including adverse examination of witnesses who will testify at the hearing a reasonable time before the date of the hearing.

D. Exculpatory evidence: The Ethics Board shall inform the subject of the Verified Complaint of exculpatory evidence in the Ethics Board's possession.

Section 9: Hearing Procedure:

A. Appointment of Hearing Examiner, Outside Counsel and Subject Matter Experts

The Ethics Board shall appoint a Hearing Examiner to conduct the hearing. The Ethics Board may retain outside counsel and subject matter experts, as needed. The Ethics Board shall seek recommendations from the Corporation Counsel for any and all appointments, and any such contracts shall be approved for form by Corporation Counsel.

B. Powers of the Hearing Examiner

The Hearing Examiner shall have the authority:

To require any person to submit, in writing, such reports and answers to questions relevant to the proceedings conducted under the Code as the Ethics Board may prescribe;

To administer oaths;

To subpoena witnesses and evidence;

To order the payment of witnesses fees and mileage, as are paid in like circumstances by the courts of this state; and

To request and obtain from the Department of Revenue copies of state income tax returns and access other appropriate information regarding all persons who are the subject of the hearing pursuant to Chapter 19 Wis. Stats.

C. The Ethics Board shall serve as the Finder of Fact, decide the Conclusions of Law, determine whether a violation of the Ethics Code has occurred, and issue any Orders/Recommendations.

All evidence considered by the Ethics Board shall be fully offered and made part of the record in the proceedings. The subject of the hearing shall be afforded an adequate opportunity to rebut or offer countervailing evidence.

A violation of the Ethics Code must be supported by clear and convincing evidence, and be based upon the affirmative vote of at least four members of the Ethics Board.

Chapters 901 to 911 of the Wisconsin Statutes apply to the admission of evidence at the hearing.

The subject of the hearing may be represented by his/her own counsel. The subject of the hearing shall have an opportunity to examine all documents, to bring witnesses, to establish all pertinent facts, to refute evidence, and to examine witnesses.

The Ethics Board may permit any person with relevant information to appear and testify at the hearing.

Section 10: Findings of Fact and Conclusions, Orders and Recommendations

A. No Violation of the Code: If the Ethics Board finds no violation of the Code, it shall immediately send written notices of its finding to the subject of the hearing. The no violation finding will not become part of the public record.

B. Violation of the Code: If the Ethics Board finds a violation of the Code it must prepare Findings of Facts and Conclusions of Law. Additionally, it must make one or more of the following Orders/Recommendations:

1. An order requiring the subject of the hearing to conform his/her conduct to the Code;
2. An order requiring the subject of the hearing to forfeit by a date certain an amount not less than \$100 but not more than \$1000 for each violation. No county entity, public official, or employee shall authorize subrogation of forfeiture funds, restitution, attorney fees and costs or anything of value to assist a person subject to an Ethics Board order;
3. An order for the specified return of County property, funds and/or gifts;
4. An order of restitution for the value of property, funds, and/or gifts procured, obtained or retained as a result of the Code violation;
5. A recommendation to the appropriate authority that the subject of the order be censored, suspended, or removed from office or employment; and
6. An order that the findings of fact and conclusions of law be made part of the public record, including instructions that certain information be sealed or redacted based on the need to protect persons and documents that in the judgment of the Ethics Board should not be part of the public record; and
7. Such other order/recommendations that may be necessary, appropriate, and consistent with the intent and purposes of the Code;

Section 11: Reviewed in Closed Session

The Ethics Board's action upon any Verified Complaint shall be in properly noticed meetings and held in closed session, unless the subject of the Verified Complaint requests, in writing, that the matter be considered in open session.

### Section 12: Public Record

The Verified Complaint must remain confidential until disclosure is permitted or required by the Code. A Verified Complaint is not part of the public record, unless it results in a finding of an Ethics Code violation. The subject of the Verified Complaint may request, in writing, that the Verified Complainant be made part of the public record.

### Section 13: Confidentiality

No member or employee of the Ethics Board may make public the identity of the individual submitting the Verified Complaint or the individuals/organizations mentioned in the Verified Complaint. The Verified Complaint must remain confidential until disclosure is permitted or required by the Code.

## **RULE VII**

### **INVESTIGATIONS**

#### Section 1: Delegation of Investigation Authority

The Ethics Board may delegate its investigation authority to other entities when prudent and practical to do so. The delegate will be an agent of the Ethics Board and subject to the same restrictions and responsibilities of Ethics Board staff under Chapter 9.

#### Section 2: Delegation Procedure

When it delegates its authority, the Ethics Board will execute a memorandum of understanding with the outside entity to identify the scope of the delegation. The memorandum will be added to the investigation file and provided to the outside entity.