

1
2 **City of New Orleans, Louisiana**
3
4 **Rules for the Ethics Review Board**
5 **(DRAFT OF NOVEMBER 18, 2016)**
6

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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 or duty to:

- 23 (a) Advise the Board on legal issues related to all functions, duties and
24 responsibilities of the Board.

1 (b) Administratively receive and process all complaints submitted to the
2 Board, advise the Board on all proposals for Consent Opinions, docket all
3 filings in connection with formal charges filed by the Office of Inspector
4 General, advise the Board in connection with any motions and hearings on
5 formal charges filed by the Office of Inspector General, cause subpoenas to
6 issue as needed, and to assist the Board with the conduct of hearings and the
7 initial drafting of findings, conclusions, and opinions.

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

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

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

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

18 J. "Public employee" means all employees of the government of the City of New
19 Orleans, including but not limited to: appointed officials; classified or unclassified
20 employees; and members or employees of all boards, agencies, commissions,
21 advisory committees, public trusts and public benefit corporations of the city.

22 K. "Respondent" means any person who is the subject of a complaint or an
23 investigation or any person to whom notice of charges is issued.

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

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

10 §201. Election of Officers

11 A. The Chair, Vice-Chair, Secretary, and other officers as designated by the
12 Board will be elected for a one-year term at the first meeting held following July
13 1 of each year.

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

16 C. The duties of the Chair include: (1) presiding at all meetings of the Board when
17 present, (2) acting or directing the staff to act between meetings of the Board on
18 routine matters involving scheduling, docketing, appearances, continuances, and
19 postponements, (3) providing direction on behalf of the Board between meetings
20 to the Board’s counsel during litigation, (4) referring matters to investigation, and
21 (5) performing all other duties pertaining to the office of Chair or as may be
22 assigned by the Board.

1 D. In the absence of the Chair, the Vice-Chair will perform all the duties of the
2 Chair.

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

5 §202. Powers of the Board

6 A. The Board is empowered to:

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

1 §203. Meetings

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

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

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

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

8 §204. Quorum and Voting

9 A. Four members of the Board constitute a quorum for the transaction of the
10 business of the Board.

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

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

16 §205. Minutes of Proceedings

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

19 § 206. Publication

20 The Board must publish its decisions, opinions, notices, and various other
21 communications by:

22 (A) Maintaining a copy at the Board's office as a public record,

23 (B) Delivering a copy to the New Orleans Public Library, and

1 (C) Posting the communication on the website of the Board.

2 **Chapter 3. Public Comment**

3 §301. Purpose

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

8 §302. Oral Comments

9 A. The Board may provide for public comment at any time that it deems
10 appropriate.

11 B. Public comment generally must be restricted to items covered in the agenda
12 for the meeting, except as the Board may otherwise provide.

13 C. A person wishing to address an item on the agenda must be present at the
14 beginning of the meeting. Exceptions may be permitted at the discretion of the
15 Chair.

16 D. “Comment Forms” must be provided for each public meeting. A person
17 wishing to comment must complete a “Comment Form” that indicates the
18 name, title, address of the speaker, and the organization or group represented.
19 The comment form must also include the subject of the comment and whether
20 the comment is in favor of, against, or merely informational regarding a
21 matter before the Board.

22 E. A maximum of three minutes per person, per agenda item may be afforded for
23 public comment. Additional time may be allocated at the discretion of the

1 Chair. If there are several speakers for a group or organization, the Chair may
2 limit the number of speakers.

3 F. Proponents of the proposal speak first, followed by opponents of the proposal,
4 and then by informational speakers.

5 G. Speakers are discouraged from making repetitive comments.

6 H. Unruly behavior, such as booing, hissing, or harassing remarks, is strictly
7 prohibited. Offenders will be removed from the meeting.

8 §303. Written Comments

9 A. A person wishing to make written comments may submit the comments to the
10 Board.

11 B. Written comments must identify the agenda items for the meeting to which
12 they are directed.

13 C. Written comments must indicate the name, title, address of the speaker, and
14 the organization or group represented. The comment form must also include
15 the subject of the comment and whether the comment is in favor of, against, or
16 merely informational regarding a matter before the Board

17 **Chapter 4. Advisory Opinions**

18 §401. General Requirements

19 A. The Board may receive and respond to requests for advisory opinions.
20 Requests for advisory opinions must be in writing, state the name and address of
21 the person requesting the advisory opinion, disclose the requestor's interest in the
22 question presented, identify the governmental agency and any individuals
23 involved or affected, specifically describe the transaction involved, be signed by

1 the person making the request, and state sufficient facts to enable the Board to
2 respond. The Board may decline to render an advisory opinion.

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

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

8 §402. Dating and Docketing

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

12 §403. Placement on Agenda

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

15 §404. Consent Agenda

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

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

22 §405. Emergency Opinions

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

9 §406. Presentation of Requests

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

14 §407. Withdrawal

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

18 §408. Notification

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

22 §409. Reconsideration

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

3 **Chapter 5. Complaints**

4 §501. Who May File a Complaint.

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

7 §502. Dating and Logging

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

10 §503. General Requirements

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

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

19 §504. Complaints

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

22 B. Upon receipt of a complaint, the Board may dismiss the complaint for want of
23 jurisdiction or other good cause, refer it to the Office of Inspector General for

1 investigation and the possible filing of formal charges, refer it to independent
2 counsel for investigation and the possible filing of formal charges if the complaint
3 is against the Office of Inspector General, or refer the complaint to another
4 agency of the City, State or Federal Government.

5 C. When the Board refers a complaint against the Office of Inspector General to
6 independent counsel, that independent counsel shall investigate and handle the
7 complaint pursuant to these rules in the same manner prescribed for an
8 investigation and prosecution handled by the Office of Inspector General. In such
9 a case, the references to “Office of Inspector General” in these rules shall apply to
10 the independent counsel.

11 §505. Withdrawal

12 A. If a complainant wishes to withdraw the complaint prior to the commencement
13 of investigation, withdrawal may be allowed, but the Board may determine the
14 issues to be of such importance as to warrant instituting or continuing the
15 investigation in the interest of the public welfare.

16 B. The Board must notify the complainant by mail of the Board’s decision with
17 respect to the complainant’s request for withdrawal within 10 days after the
18 decision is made.

19 §506. Notification of Board Dismissal or Referral

20 The Board must notify the complainant by mail of the Board’s decision to dismiss
21 or to refer a complaint within 10 days after the decision is made.

22 §507. Notification of Investigation

1 A. The Office of the Inspector General shall send notice and a copy of a
2 complaint, by certified mail, to the respondent who is the subject of the complaint
3 within 30 days after receipt.

4 B. The Inspector General shall send to the complainant and the respondent notice
5 of the disposition of all noncriminal complaints, including notice of dismissal,
6 referral, or the filing of formal charges. Such notice shall be sent within 30 days
7 after disposition.

8 **Chapter 6. Investigations**

9 §601. Investigation by the Office of Inspector General

10 A. The Office of the Inspector General may investigate any matter by gathering
11 evidence it deems appropriate, including but not limited to sending a letter of
12 inquiry to the respondent which may be incorporated in the notice of the
13 investigation, and questioning both the respondent who is the subject of the
14 complaint and the complainant while conducting an investigation. All
15 investigations must remain confidential unless the Office of the Inspector
16 General decides that charges should be filed or referred for criminal
17 investigation or prosecution.

18 B. The Office of the Inspector General must afford the person who is the subject of
19 an administrative investigation 30 days from notification within which to respond.
20 The respondent shall sign any and all responses to a notice of investigation or a
21 letter of inquiry including when the respondent is represented by counsel and
22 counsel signs a letter in response,

23 §602. Investigation of Complaints

1 A. The Office of the Inspector General may investigate any complaint it receives
2 or the Board refers to it.

3 B. The Office of Inspector General may also investigate notices, reports or
4 referrals from the news media, and any other source.

5 §603. Post-Investigation Procedures

6 A. When an investigation is completed, the Office of the Inspector General shall
7 decide whether: (1) further investigation is necessary, (2) charges should be
8 filed with the Board and the case docketed for public hearing, (3) a joint
9 petition for consent resolution should be filed with the Board by the
10 respondent and the Office of Inspector General in lieu of the filing of formal
11 charges, (4) the file should be closed in order to serve the public interest or
12 because no violation occurred, or (5) the matter should be referred for
13 investigation or prosecution to another City, State, or Federal administrative
14 or law-enforcement agency.

15 B. The Office of the Inspector General shall report its disposition of each
16 complaint to the Ethics Review Board within 30 days.

17 **Chapter 7. Consent Opinions**

18 §701. General

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

21 §702. Procedures

22 If the Board decides to offer a consent opinion, the Chair may direct the staff to
23 prepare a draft that will be sent to the respondent who is the subject of the

1 allegation for acceptance, modification, or rejection. If the respondent who is the
2 subject of the allegation accepts the terms of the proposed consent opinion, then
3 the opinion will be placed on the Board's agenda for review. The Board may
4 reject a proposed consent opinion and take further appropriate action. If accepted
5 by the Board, the opinion will be published on the website of the Ethics Review
6 Board. If the subject of the allegation refuses the terms of the proposed consent
7 opinion, then the item must be placed upon the Board's agenda for further action.

8 **Chapter 8. Hearings**

9 §801. Private Hearings

10 The procedures governing a private hearing will be, to the extent practicable,
11 identical to public hearing procedures, except that a private hearing is closed to
12 the public.

13 §802. Initiating Public Hearings

14 A. A public hearing is initiated by the Office of the Inspector General through the
15 filing of formal charges with the Board.

16 B. The Board must fix the date, time, and place of the public hearing and notify
17 all counsel and the respondent at least 30 days in advance of the hearing.

18 C. The charges filed by the Office of the Inspector General shall contain:

- 19 1. The name of the person charged;
- 20 2. The factual allegations of misconduct;
- 21 3. The specific provisions of law that the respondent allegedly violated;

22 and

1 3. The name, address, telephone number, email address, and bar roll
2 number of the Trial Attorney.

3 §803. Summary Disposition or Notice of Public Hearing

- 4 1. After the filing of the formal charges by the Office of the Inspector General,
5 the Board shall consider whether the formal charges should be: summarily
6 dismissed; remanded to the Office of the Inspector General for further
7 investigation; resolved by consent disposition; or set for hearing.
- 8 2. The Board must post notice of public hearings in compliance with the
9 requirements of the Open Meetings Law and on the Board's website.

10 §804. Continuance of Public Hearings

- 11 A. A matter fixed for public hearing and not reached or resolved may be
12 continued to another date by the Board.
- 13 B. The Board or the Chair may grant, with respect to any one or more respondents
14 involved, a continuance of any public hearing; in the Board's discretion, the
15 public hearing may proceed as to those respondents to whom no continuance was
16 granted.
- 17 C. With the Board's approval, a hearing may be continued by consent of all
18 interested parties.

19 §805. Procedures in Hearings

- 20 A. Except in the case of private hearings, all hearings conducted under the
21 provisions of this Chapter must be open to the public.
- 22 B. Respondents and witnesses are subject to cross-examination. Each member of
23 the Board may also examine and cross-examine any witnesses.

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

3 D. Hearings to inquire into charges against a respondent shall proceed in the
4 following order, subject to change, which may include eliminating statements of
5 both the Trial Counsel for the Office of the Inspector General, , and the
6 respondent, in the discretion of the Chair:

7 (1) Brief opening statements by the Trial Counsel for the Office of the
8 Inspector General, and the respondent whose conduct is the subject of the
9 proceeding, in that order;

10 (2) All proposed exhibits of both the Office of the Inspector General, and
11 the respondent whose conduct is the subject of the proceedings, shall be
12 numbered and marked, with a list of the exhibits attached. All exhibits shall be
13 introduced into evidence at the commencement of the hearing, except in the case
14 of objections to admissibility. The Chair may either rule on any objection to the
15 admissibility of one or more exhibits or defer the ruling until a later specific time
16 in the proceedings. When an audio or video tape constitutes an exhibit, except in
17 exigent circumstances (decided in the discretion of the Chair), such tape must be
18 introduced along with a transcription thereof made by a certified court reporter.

19 (3) Presentation of evidence by the Office of the Inspector General; and
20 the respondent whose conduct is the subject of the proceeding, in that
21 order;

22 (4) Presentation of evidence by the Office of the Inspector General in
23 rebuttal; and

1 (5) Argument by the Office of the Inspector General and by the respondent
2 whose discipline is the subject of the proceeding and in rebuttal by the Office of
3 the Inspector General, in that order.

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

7 F. The Office of the Inspector General shall not engage in ex parte
8 communications with the Board as a whole or with any individual Board member
9 as to a complaint against a respondent from the time a complaint is received
10 except as may be necessary for scheduling purposes. Both the Office of the
11 Inspector General and the members of the Board shall take all necessary steps to
12 avoid such ex parte communications.

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

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

22 §806. Evidence

- 1 A. The Chair has power to rule on procedural and evidentiary matters, unless the
2 Board approves a motion to overrule the decision of the Chair. The General
3 Counsel of the Board shall advise the Board as to all legal, procedural, and
4 evidentiary matters.
- 5 B. The Board may limit corroborative evidence.
- 6 C. When a ruling is made excluding evidence, counsel may dictate into the record
7 as a proffer the facts to be proven if the excluded evidence had been admitted, and
8 that proffer will be made available to be considered in the event of appellate
9 review.
- 10 D. The charges may be revised to conform to the evidence admitted, even if this
11 revision goes beyond the scope of the original complaint.
- 12 E. The Board must give effect to the rules of privilege recognized by law.
- 13 F. All evidence of which the Board desires to avail itself, including records and
14 documents in the possession of the Board, must be offered and made a part of the
15 record. Documentary evidence may be received in the form of copies or excerpts
16 or by incorporation by reference. In case of incorporation by reference, the
17 materials so incorporated must be available for examination by the parties before
18 being received in evidence.
- 19 G. The Board may take notice of judicially cognizable facts, federal census data,
20 and such other matters as may be deemed appropriate.
- 21 H. The Board may take notice of the provisions of any law within its jurisdiction
22 without the necessity of an offer in evidence.

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

4 §807. Subpoena of Witnesses and Production of Evidence

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

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

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

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

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

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

7 G. The Board or its Chair may issue an appropriate order at any time recalling any
8 subpoena, subpoena duces tecum, or request issued under the provisions of this
9 rule. The respondent may likewise obtain an order from the Board recalling any
10 subpoena, subpoena duces tecum, or request issued or caused to be issued by the
11 respondent.

12 §808. Sequestration of Witnesses

13 The Board may order that the witnesses in any hearing be sequestered on its own
14 motion or if requested by a respondent or the Office of the Inspector General.

15 This rule does not preclude a respondent from hearing the testimony of any other
16 witnesses. If so ordered, all witnesses must be administered an oath and
17 admonished not to discuss their testimony until the conclusion of the proceeding,
18 except with counsel.

19 §809. Summary Disposition of Charges

20 A. At any time after the Office of the Inspector General has filed a charge, any
21 member of the Board or a respondent may file a written motion for summary
22 disposition with the Board on any of the following grounds:

- 1 1. The Board lacks jurisdiction of the subject matter, or over the
- 2 respondent;
- 3 2. The charges have not been initiated in the manner prescribed by the
- 4 Rules;
- 5 3. The charges, if true, would not constitute an ethics violation under the
- 6 applicable law.
- 7 4. The time in which to commence action as provided by any law within
- 8 the Board’s jurisdiction has passed;
- 9 5. The affidavits and other documents filed in connection with the charges
- 10 show that there is no genuine issue of material fact and that the respondent
- 11 is entitled to summary dismissal as a matter of law; or
- 12 6. Other good cause exists for dismissal, including but not limited to, that
- 13 the matter should be referred to the Board of Ethics of the State of
- 14 Louisiana or other enforcement agency, although in such cases the Board
- 15 will retain authority to reconsider the matter if the entity to which it was
- 16 referred refuses jurisdiction.

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

22 C. When a request for summary disposition has been filed with the Board in any
23 proceeding, the Office of the Inspector General may submit oral or written

1 argument or brief in connection therewith and shall provide the respondent or
2 respondent's attorney with a copy thereof.

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

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

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

9 §810. Consolidation of Public Hearings

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

14 §811. Transcripts of Public Hearings

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

18 §812. Witness Fees in Public Hearings

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

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

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

4 §813. Costs of Public Hearings

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

10 §814. Board Action Following Public Hearings

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

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

18 C. The General Counsel must send, by certified mail, notice of the Board's
19 decision to the person charged and to the complainant within 10 days after the
20 Board's decision.

21 §815. Rehearings

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

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

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

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

18 **Chapter 9. Pre-Hearing Procedures**

19 §901. Discovery

20 A. Any person who is to be the subject of a public hearing is entitled to the
21 following, upon written request to the Board at least 15 days prior to the date of
22 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 Office of the Inspector
4 General intends to call at the proposed hearing, together with any written
5 statements obtained by the Office of the Inspector General for the Board
6 from such persons; and
- 7 3. A copy of each physical document that the Office of the Inspector
8 General intends to introduce before the Board at the proposed hearing.

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

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

20 D. The Office of the Inspector General and any respondent may serve upon each
21 other written interrogatories, pursuant to the provisions of applicable Code of
22 Civil Procedure articles, to be answered by the party served within 15 days of
23 receipt.

1 §902. Motions and Exceptions

2 A. Motions and exceptions may be made before, during, or after a public hearing.

3 All motions and exceptions must be filed at least five days prior to the day when
4 the motion or exception is sought to be heard, except for good cause as
5 determined by the Board.

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

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

12 §903. Pre-hearing Notices

13 A. By order of the Board and not less than 10 days prior to a public hearing, the
14 Office of the Inspector General and any respondent must mutually exchange pre-
15 hearing notices that set forth:

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

19 2. A detailed itemization of all pertinent facts established by stipulations
20 and admissions.

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

22 4. A detailed itemization of the contested issues of law.

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

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

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

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

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

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

16 §904. Pre-Hearing Conference

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

21 1. Simplification of issues;

22 2. Possibility of stipulations, admissions of fact, or introduction of
23 documents;

- 1 3. Limitations on witnesses; and
- 2 4. Such other matters as may be pertinent.

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

7 **Chapter 10. Penalties**

8 §1001. Penalties for Violations; Criteria

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

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

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

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

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

7 **Chapter 11. Records and Reports**

8 §1101. Custodian

9 The General Counsel of the Board shall be the custodian of all records, reports,
10 and files of the Board, including electronic reports and files.

11 §1102. Copies

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

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

18 §1103. Records and Reports; Accepting and Filing

19 A record or report submitted pursuant to this Chapter is considered accepted and
20 filed upon receipt by the staff or upon acknowledgment of receipt by the Board's
21 electronic filing system, unless the record or report is not in compliance with the
22 requirements established by this Chapter or by law. The name of a person
23 submitting records and reports that are accepted and filed must be listed on the

1 Board's agenda. The records and reports that are not in compliance with the
2 requirements established by this Chapter or by law must be placed upon the
3 Board's agenda for further action by the Board.

4 **Chapter 12. Electronic Records**

5 §1201. General

6 The Board recognizes the importance of immediate public access to publicly
7 disclosed information.

8 §1202. Methods of Filing

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

11 §1203. Time of Filing

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

15 §1204. Refusal of Electronic Reports

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

20 **Chapter 13. Miscellaneous**

21 §1301. Relations with Inspector General

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

1 §1302. Annual Report

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

8 §1303. Review of Board Rules

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

17 §1304. Method of Amendment

18 These rules may be amended by a majority vote of the members of the Board at
19 any regular or special meeting of the Board for which proper notice has been
20 given under the Open Meetings Act, provided that each member has received a
21 copy of the proposed rule change at least 72 hours before the meeting. In the
22 event of an emergency, the Board may amend its rules by a two-thirds vote of
23 members present and voting, but such change must be ratified at the next regular

- 1 or special meeting of the Board in accordance with procedures as stated in the
- 2 preceding sentence.