

COUNTY OF SUFFOLK



BOARD OF ETHICS

SUFFOLK COUNTY BOARD OF ETHICS PROCEDURAL RULES FOR HEARINGS

I. INITIAL DETERMINATION

1. If the Board makes an initial determination pursuant to the Suffolk County Charter A§30-6(A), a review of the County Financial Disclosure requirements, based on a complaint, investigation, or other information available to the Board, that there is reasonable cause to believe that a public servant or former public servant has violated a provision of Chapter 77, Part 1, Article I, of the Suffolk County Code or other applicable provision of law pursuant to A§30-5(A), the Board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the Board relied for its determination of reasonable cause and a statement of the provisions of law allegedly violated. The Board shall also inform the public servant of the Board's procedural rules. The public servant shall have 45 days to respond and shall have the right to be represented by counsel or any other person (*Amended July 8, 2014*).
2. If, after receipt of the public servant's response, the Board determines that there is no reasonable cause to believe that a violation has occurred, the Board shall dismiss the matter and inform the public servant in writing of its decision.
3. If, after consideration of the public servant's response, the Board determines that there remains reasonable cause to believe that a violation has occurred, the Board may direct a hearing be conducted, conduct the hearing, or refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings.
4. Such referral as required by Paragraph I, Subsection 3 of this provision shall consist of a copy of the reasonable cause finding to be served on the public servant's County Department Head and the Suffolk County Law Department (*Amended July 8, 2014*).

II. COMMENCEMENT OF FORMAL PROCEEDINGS AND PLEADINGS

1. The Board shall institute formal hearing proceedings by serving a petition on the public servant personally or by certified or registered mail, return receipt requested, or in such manner as the Board directs, if service is impracticable by the aforementioned methods. The

Petition shall set forth the facts which, if proved, would constitute a violation of Chapter 77, Part 1, Article I of the Suffolk County Code or other applicable provision of law, as well as the applicable provisions thereof which are alleged to have been violated. The petition shall also advise the public servant of the public servant's rights to file an answer, to a hearing, to be represented at such hearing by counsel or any other person, and to cross-examine witnesses and present evidence.

2. The public servant shall answer the petition by serving an answer on the Board within eight days after service of the petition, unless a different time is fixed by the Board. The public servant shall serve the answer personally or by certified or registered mail, return receipt requested. The answer shall be in writing and shall contain specific responses, by admission, denial, or otherwise, to each allegation of the petition and shall assert all affirmative defenses, if any. The public servant may include in the answer matters in mitigation. The answer shall be signed and shall contain the full name, address, and telephone number of the public servant. If the public servant is represented, the representative's name, address, and telephone number shall also appear on the answer, which shall be signed by either the public servant or by his or her representative.
3. If the public servant fails to serve an answer, all allegations of the petition shall be deemed admitted and the Board shall proceed to hold a hearing in which prosecuting counsel shall submit for the record an offer of proof establishing the factual basis on which the Board may issue an order. If the public servant fails to respond specifically to any allegation or charge in the petition, such allegation or charge shall be deemed admitted.
4. No technical forms of pleadings or motions shall be required. Except when otherwise specifically provided by law, pleadings need not be verified or accompanied by affidavit.

III. PRE-HEARING CONFERENCES AND DISCOVERY

The Board may require, or grant, that the named party or representative appear for a pre-hearing conference before a Board designee, Hearing Officer appointed by the Board or the Executive Director to consider motions and/or applications for bills of particular or requests for production of materials or information, including but not limited to, any witness statements, investigatory statements or notes, exculpatory evidence or any other evidence relevant and material to the public servant's defense.

Approved by Majority Vote

On November 20, 2013

IV. HEARINGS

1. Hearings shall be conducted by the Board, or upon designation by the Board, by a member of the Board or Hearing Officer appointed by the Board.
2. The Board may hear a case or may designate a member of the Board or Hearing Officer to hear a case, make findings of fact and conclusions of law, preside over pre-hearing matters and adjournments, and make recommendations to the Board for the proposed disposition of the proceeding.
3. The Board may authorize General Counsel or any other lawyer under their authority to present evidence at a hearing. Prosecuting counsel shall have the burden of proof by a preponderance of the evidence, shall initiate the presentation of evidence, and may present rebuttal evidence. The responding party may introduce evidence after prosecuting counsel has completed his or her case. Opening statements, if any, shall be made first by prosecuting counsel. Closing statements, if any, shall be made first by the responding party. This order of proceedings may be modified at the discretion of the Board.
4. Compliance with technical rules of evidence is not required. The hearing shall be public or private at the discretion of the public servant. The public servant shall have a reasonable opportunity to defend himself or herself and an opportunity to testify in his or her own behalf, but shall not be required to testify. Each party has the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony shall be taken under oath which the Board or Board designee or Hearing Officer is authorized to administer.

V. DECISIONS AND ORDERS

1. When a hearing has been conducted by a Hearing Officer or member of the Board designated to hear the case, a report of recommended findings of fact and conclusions of law and recommendations for the disposition of the proceeding shall be issued and forwarded, along with any recording of the proceeding and all documents introduced into the record, to the Board for review and final action. The report shall not be made public.
2. If, after the hearing and upon a consideration of all the evidence in the record of hearing, the Board finds that a public servant has engaged in conduct in violation of Chapter 77, Part 1, Article I, or other applicable provision of law, of the Suffolk County Code, the Board shall state its final findings of fact and conclusions of law and issue an order taking the following action:
 - a. Dismissing the petition;
 - b. Referring the matter to the appropriate agency;
 - c. Issuing a warning letter; and/or
 - d. Imposing a civil fine.

3. The Board shall issue its final decision within forty-five days after the completion of the hearing. If the Board is unable to issue its decision within this forty-five day period, it shall so advise the public servant prior to the expiration of the forty-five day period. In no event, shall the Board issue its decision more than ninety days after the completion of a hearing.
4. The Board's order and the Board's findings and conclusions shall be made public.
5. The Board's decision and order shall set forth its conclusions and such penalties and, when appropriate, may refer the matter to the District Attorney or other appropriate law enforcement agency^{i, ii}.

VI. GENERAL MATTERS

1. Computation of Time

In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Computation of time shall be all calendar days, except that when the last day of the time period falls on a Saturday, Sunday or public holiday, the period shall run until the end of the next following business day.

2. Appearances

In a proceeding before the Board, any person or party may appear on his or her own behalf, or by an attorney or by a duly authorized representative. The person appearing for the party shall file a Notice of Appearance with the Board on a form prescribed by the Board which shall state either that the individual is an attorney duly licensed to practice law or if not an attorney, that the authorization includes the power of the agent or representative to bind the person in the matter before the Board.

3. Service of Papers

Any paper required to be served upon a public servant shall be served upon him or her or upon the representation designated by him or her or on any person otherwise designated by law to receive service of papers.

Service of a petition and answer shall be by personal service or certified mail, return receipt requested, or as otherwise authorized by law, as described in subsection III. Service of notices, orders, and all other documents, except petitions, answers and subpoenas, shall be served on the public servant as follows:

- a. by personal delivery, or hand delivery to the person to be served; or
- b. by first class mail, or overnight delivery, to the public servant's last known residence or actual place of business; or

- c. in such a manner as the Board directs, if service is impracticable under paragraphs (a) through (b) of this subdivision, or in any manner agreed upon by the parties.

4. Subpoenas

The Board may issue subpoenas for witnesses and/or documentary evidence by supermajority vote. The Board may quash or modify the subpoena by a supermajority vote upon a showing of good cause.

5. Record of the Hearings

All hearings, whether open or closed, shall be recorded by electronic means.

6. Continuances

A hearing scheduled to be conducted before the Board shall not be delayed by a continuance unless a motion for continuance is made not less than five days before the scheduled hearing date. A continuance shall not be granted unless the motion for continuance, in the Board's opinion, sets forth good and sufficient cause for the continuance.

7. Interpreters

The Board shall ascertain before the hearing whether an interpreter will be required and make appropriate arrangements.

8. Confidentiality

Testimony received or other information obtained by a member of the Board or the staff of the Board in connection with the conduct of a hearing is confidential and shall not be disclosed by any such individual to any person or entity outside the Board. However, the Board shall provide all documents requested by the Suffolk County Legislature or as required by lawⁱⁱⁱ.

9. *Ex Parte* Communications

After service of the petition in a case, and except for ministerial matters and except on consent or in an emergency, communications with the Board designee or Hearing Officer appointed to conduct the hearing shall only occur with all parties present.

VII. MOTIONS FOR RECONSIDERATION

A motion for reconsideration, rehearing, or re-argument of a final decision shall be filed by a party within 10 days of the order having become final. The motion shall be served upon all other parties and shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. Evidence that was not presented in the hearing will not be considered on reconsideration, re-hearing, or re-argument.

ⁱ Suffolk County Code A30-6(C): If the Board determines, after a hearing or the opportunity for a hearing, that a public servant has committed a violation, it shall issue a decision and order setting forth its conclusions and imposing such penalties as it deems appropriate and, when appropriate, may refer the matter to the District Attorney or other appropriate law enforcement agency. If the Board determines, after a hearing or the opportunity for a hearing, that a public servant has not violated provisions of Chapter 77, Part 1, it shall issue a decision setting forth its conclusion.

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30 days late	For May 15th filers, on or before June 21, 2013	\$250
60 days late	For May 15th filers, on or before July 22, 2013	\$500
90 days late	For May 15th filers, on or before August 20, 2013	\$750
120 days late	For May 15th filers, on or before September 19, 2013	\$1,000

ⁱⁱⁱ § A30-8. CONFIDENTIALITY. [Amended 8-21-2012 by L.L. No. 49-2012] A. Except as otherwise provided by this article, testimony received or any other information obtained by a member of the Board or the staff of the Board in connection with the preparation of an advisory opinion or the investigation of a complaint or referral, or the conduct of a hearing related to a complaint or referral, is confidential and shall not be disclosed by any such individual to any person or entity outside the Board. However, the Board shall provide all documents requested by the Suffolk County Legislature or a duly authorized committee of the Legislature that is exercising oversight of the Board of Ethics. Such a request for records must be approved by a 2/3 vote of the Legislature via a procedural motion. B. Any unauthorized disclosure of confidential information by a member of the Board, or the executive director, independent counsel or staff of the Board, shall be a violation punishable by a fine of not more than \$1,500, or imprisonment of not more than 15 days, or both.

Approved by Majority Vote
On November 20, 2013

Amended by Majority Vote
On July 8, 2014