



CODE OF ETHICS AND CONDUCT COMPLAINT APPEAL OF HEARING PANEL DETERMINATION

Riverside Municipal Code Chapter 2.78

City of Arts & Innovation

A Public Document

1. Person filing appeal:

Name Jennifer Larratt Smith Email [REDACTED]
Address [REDACTED]
Phone [REDACTED]

2. Hearing Panel Determination Being Appealed:

Complainant Jennifer Larratt-Smith
Officer Against Whom Complaint Was Filed Councilmember Conder Ward 4

3. Date of Hearing: 10/6/2022

4. Explain the clear error or abuse of discretion by the hearing panel:

see attached document "Appeal Question 4"

5. Signed under penalty of perjury of the laws of the State of California:


Signature

10/14/2022
Date

BE ADVISED: A decision of the hearing panel finding a violation of the Prohibited Conduct section of the Code of Ethics and Conduct shall be automatically appealed to the City Council to be heard within thirty (30) City business days. No new evidence or witnesses may be submitted or considered by the City Council on appeal.

File completed form:

Office of the City Clerk
City of Riverside
3900 Main Street
Riverside, CA 92522
951-826-5557
city_clerk@riversideca.gov

4. Explain the clear error or abuse of discretion by the hearing panel.

At the pre-hearing on 10/6/2022, I was not given the opportunity to present my evidence to the ethics panel prior to their vote. This is a material procedural error and violation of due process.

The procedure in your Municipal Code 2.78.080 E.4-6 reads:

4. The hearing panel shall review the submitted tangible evidence to determine if it is relevant to the issues raised in the complaint. If it is determined, by a majority vote, that any such evidence is irrelevant to the issues raised in the complaint, then such evidence will be deemed inadmissible at the hearing and shall be excluded.
5. The complainant shall verbally present to the hearing panel any and all evidence, both tangible and testimonial, that will be presented at the hearing to prove the allegations in the complaint.
6. The hearing panel shall determine, by a majority vote, whether the complainant has shown that the evidence, if taken as true, more likely than not shows that there may be a potential violation of the prohibited conduct section of this chapter.

Step 5 was not followed. If you review the video of the ethics pre-hearing, you can see that at time signature 31:40, Chair Foley completes section 2.78.080.E4 of the proceedings but proceeds to 2.78.080.E6 without me having the opportunity to present my case.

https://riversideca.granicus.com/player/clip/5267?view_id=2&redirect=true&h=73818423552db1fa0266207be83bf746

Your process is reiterated in the document entitled "Board of Ethics Hearing Rules and Procedures" (adopted May 3, 2018). Under Items 7:K-M:

- K. The Hearing Panel shall review all submitted tangible evidence to determine if it is relevant to the issues raised in the complaint. If it is determined by a majority of the Hearing Panel that any evidence is irrelevant to issues raised in the complaint, then such evidence will be deemed inadmissible at the hearing and shall be excluded.
- L. The complainant shall then have ten (10) minutes to verbally present to the Hearing Panel any and all evidence, both tangible and testimonial, that the complainant intends to use at the hearing to prove a violation of the Prohibited Conduct section of the Code of Ethics. **This presentation is for the complainant to convince the Hearing Panel that the complaint has merit and that a formal hearing is necessary.** The complainant shall summarize any witness testimony the complainant intends to introduce at

the hearing and explain how that testimony tends to prove a violation of the Prohibited Conduct section of the Code of Ethics. In addition, the complainant shall explain to the Hearing Panel how the tangible evidence tends to prove a violation of the Prohibited Conduct section of the Code of Ethics (bolded emphasis mine).

M. The Hearing Panel is to assume that all representations of evidence by the complainant are true for the limited purpose of determining whether the complainant has shown that it is more likely than not that a violation of the Prohibited Conduct section of the Code of Ethics has occurred.

Step L, the section of the pre-hearing where the explicit purpose is to give the complainant an opportunity to convince the panel of the complaint's merit, never occurred. Step M presupposes the presentation of evidence from Step L. Without this crucial step in the procedure, I had no opportunity to speak prior to the vote.

After the vote, realizing we were not given an opportunity to speak, I tried (at 38:44 of the pre-hearing video) to ask a point of clarification and was told by Chair Foley "we'll call you when it's time to speak." When I was first allowed to speak in my public comments at 42:42, I pointed out that I was not given opportunity to present my evidence. I also notified the City Attorney, the City Clerk, and the City Council of the error that night via email. I spoke with Phaedra Norton, City Attorney, the following afternoon at which time I was informed that I would have the opportunity to appeal the decision to the City Council based on this procedural error.

Since this material error in procedure denied me the opportunity to speak and failed to follow your own procedure, any subsequent decision, especially those that were to rely on the evidence I was not permitted to present, is invalid.

Therefore, I request that as a remedy the City reconvene the pre-hearing and consider the case de novo. I would like an opportunity to make my presentation of evidence in accordance with your procedures and your Municipal Code.