

## **Board of Ethics Hearing Panel**

### **Pre-Hearing Conference Suggested Procedural Checklist**

- Call the meeting to Order
  
- Address item 1 on agenda – Public Comment
  - a. If Microsoft Teams, then announce Phone # and wait to see if there are any calls. Ask for public comments from those attending in person.
  
- After public comment, announce and read the agenda title for item 2 on the published agenda.
  - a. Ask complainant and respondents to identify themselves

### **FIRST MATTER FOR THE HEARING PANEL TO ADDRESS:**

**AS THE HEARING PANEL WE MUST REVIEW THE COMPLAINT AND DETERMINE IF IT COMPLIES WITH ALL OF THE PROCEDURAL REQUIREMENTS OF THE CODE OF ETHICS AND CONDUCT**

**PRIOR TO THE HEARING PANEL REVIEWING THE COMPLAINT I WILL ASK THE CITY CLERK TO CONFIRM THE FOLLOWING:**

**Chair:** “City Clerk can you confirm that the complaint has been deemed complete and all of the complaint procedures set forth in Section 2.78.080 have been followed”

City Clerk provides response; yes or no. If no, state which of the following complains procedures was **not followed:**

- Name, address, telephone number and email address, if available, of the complainant
- Name and position of the public official against whom the complaint is made
- Date of the alleged violation
- The date the complainant became aware of the alleged violation
- The specific provision of the Prohibited Conduct section of this chapter alleged to be violated
- Description of the specific facts of the alleged violation
- The names, addresses, telephone numbers and email addresses, if known, of each person the complainant intends to call as a witness at the hearing
- Copies of any and all documents, photographs, recordings or other tangible materials to be introduced and considered at the hearing
- Signed under penalty of perjury of the laws of the State of California.
- Filed within 180 calendar days of discovery of the alleged violation of this chapter, but no more than three years from the date of the alleged violation

**Chair:** “I will now ask the Hearing Panel to discuss and determine whether the complaint is against a public official subject to the Code.” (Yes or No)

Notes: \_\_\_\_\_

**Chair:** “I will now ask the Hearing Panel to discuss and decide whether the complaint alleges a violation of one or more prohibited conduct sections of the Code.” (Yes or No)

Notes: \_\_\_\_\_

**Chair:** “I will now ask the Hearing Panel to discuss and decide whether the complaint does not restate allegations of violations that were the subject of a previous complaint.” (Yes or No)

Notes: \_\_\_\_\_

Motion:

**Chair to call for the following motions:**

**Chair:** “I now call for a motion to determine if the complaint does or does not comply with all of these requirements.”

[Motion, second to the motion and a vote]

**NOTE: If a majority of the hearing panel finds the complaint DOES NOT COMPLY with all of the requirements, the Chair shall state the findings of deficiency on the record and shall call**

**for a vote of the hearing panel to dismiss the complaint without a hearing.**

“The Hearing Panel has determined that the complaint is deficient because \_\_\_\_\_. I now call for a vote of the Hearing Panel to dismiss the complaint without a hearing.”

[vote]

Section 2.78.080(E) (2) The Hearing Panel shall instruct the City Clerk to prepare a Statement of Findings for the Hearing Panel to adopt at the next regular meeting of the Board of Ethics.

**NOTE: If the Hearing Panel determines that the complaint DOES COMPLY, the pre-hearing conference then continues.**

**SECOND MATTER FOR THE HEARING PANEL TO ADDRESS:**

- The Code requires the Hearing Panel to facilitate settlement discussions
- i. **Chair:** “I will now ask the parties if there a desire by the parties to engage in settlement discussions?” (Yes or No)
  - ii. **Chair:** “If so, how or what is the proposal, etc.”

**THIRD MATTER FOR THE HEARING PANEL TO ADDRESS:**

**Chair:** “I now ask the Hearing Panel to review the submitted evidence and determine if any evidence is irrelevant and should be deemed inadmissible.”

- Hearing panel: Review and have a discussion of the evidence and whether there is any irrelevant evidence

Notes: \_\_\_\_\_

- Chair:** “Does any member wish to make a motion to exclude any evidence as irrelevant and inadmissible.”

[Motion, second to the motion and a vote]

### **FOURTH MATTER FOR THE HEARING PANEL TO**

#### **ADDRESS:**

- Chair:** “The Hearing Panel will now consider whether complainant has shown that the evidence, if taken as true, more likely than not shows a potential violation of prohibited conduct of the Code of Ethics.”

- Chair:**

“I will now read Section 7.L and M of the Board of Ethics Hearing Rules:

The Complainant now has 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.

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.

- Call up Complainant to present their case
- Ask the Hearing Panel if they have any questions for the Complainant
- After presentation by Complainant, call for public comment – complainant does not get to comment on their own presentation

If Microsoft Teams, then ask Clerk for Phone # and wait to see if there are any calls. Ask for public comments from those attending in person.

**Chair:** “I will now ask the Hearing Panel to discuss 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 the Code of Ethics.”

Hearing panel: Review and have a discussion of whether the evidence, if true, more likely than not shows that there may be a potential violation of the prohibited conduct section of the Code of Ethics.

Notes: \_\_\_\_\_

**Chair:** “I will now ask for a motion determining that 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 the Code of Ethics.”

Hearing panel: Make a motion that “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 the Code of Ethics Review and have a discussion of whether the evidence, if true, more likely than not shows that there may be a potential violation of the prohibited conduct section of the Code of Ethics.”

**Or**

Hearing panel: Make a motion that “The complainant **has not 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 the Code of Ethics Review and have a discussion of whether the evidence, if true, more likely than not shows that there may be a potential violation of the prohibited conduct section of the Code of Ethics.”

Notes: \_\_\_\_\_

If after the vote, the Panel determines that the complainant **has failed** to show that it is more likely than not that there may be a potential violation of prohibited conduct, **THEN** the Chair shall instruct the City Clerk to prepare a statement of findings for the hearing panel to adopt at the next regular meeting of the Board of Ethics.

**Chair:** “The Hearing Panel has determined, by majority vote that the complainant has failed to show that it is more likely than not that there may be a potential violation of prohibited conduct. I now instruct the City Clerk to prepare a statement of findings for the Hearing Panel to adopt at the next regular meeting of the Board of Ethics.”

If after the vote, the Hearing Panel determines that the complainant **has shown** that it is more likely than not that there may be a potential violation of prohibited conduct, **THEN** discuss the following:

If applicable, does the Hearing Panel wish to issue subpoenas  
**Chair:** “Does the Hearing Panel wish to issue any subpoenas”

**Chair:** “Does the Hearing Panel want to set limits for the parties at the future hearing on the complaint?”

Adjourn the meeting