



Board of Ethics Hearing Process

A General Overview

August 6, 2020

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I. PRE-HEARING CONFERENCE

- The Chair of the Hearing Panel shall preside over the pre-hearing conference.
- The pre-hearing conference is not a formal judicial proceeding and rules of evidence do not apply.
- The pre-hearing conference shall take place prior to a hearing on the actual complaint.
- All parties are to be present at the conference, but absence is not grounds to continue the conference, and the conference shall proceed as if the absent party were present.



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PRE-HEARING CONT'D

- The hearing panel shall review the complaint for compliance of RMC 2.78.080 E1 which include:
 - Complaint procedures were followed
 - Complaint is against a public official
 - Complaint alleges a violation of one or more of the provisions of the prohibited conduct outlined
 - Complaint does not restate allegations of violations from a previous complaint



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PRE-HEARING CONT'D

- If a majority of the hearing panel determines the complaint does not comply with all the provisions of RMC 2.78.080 E1, then the Chair shall state the finding of deficiency on the record and call for a vote dismissing the complaint without a hearing.
- If a majority of the hearing panel determines that the complaint complies with RMC 2.78.080 E1, then the pre-hearing conference shall proceed.



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PRE-HEARING CONT'D

- If the hearing panel determines the complaint is in compliance, the hearing panel shall facilitate settlement discussions between the two parties and review 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, then such evidence will be deemed inadmissible at the hearing and shall be excluded.



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PRE-HEARING CONT'D

- The complainant shall have ten (10) minutes to 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. Complainant shall explain how the tangible evidence proves a violation of prohibited conduct.
- This presentation is for the complainant to convince the Hearing Panel that the complaint has merit and a formal hearing is necessary.



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PRE-HEARING CONT'D

- The Hearing Panel shall determine, by a majority vote, whether the complainant has shown by the evidence, if taken as true, that more likely than not that there may be a potential violation of the Prohibited Conduct, the City Clerk shall set a hearing date within forty-five (45) City business days following the pre-hearing conference.
- The hearing panel may discuss and act upon whether or not any subpoenas are necessary to be issued by the hearing panel pursuant to RMC Section 2.80.040 (A)(5) and (B)(5)[super majority of 4 affirmative votes]. The hearing panel may set time limits for the parties to present evidence at the hearing on the complaint.



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PRE-HEARING CONT'D

- If it is determined by the hearing panel that the complainant failed to establish that it is more likely than not that there may be a potential violation of the Prohibited Conduct section, the Chair of 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. This statement of findings shall be considered the final decision of the hearing panel is immediately appealable to the City Council.
- No decision or ruling by the hearing panel at the pre-conference hearing is appealable to the City Council pursuant to RMC Section 2.78.090 Appeal Procedures until after there is a final decision by the hearing panel following a hearing on the complaint.



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II. HEARING ON COMPLAINT

- The Chair shall call the matter for hearing and asks the parties to identify themselves.
- The City Clerk, or their designee, shall administer the oath to all witnesses who will be offering testimony before the Hearing Panel. No testimony will be received by the Hearing Panel without the witness first having been administered the oath.
- Prior to opening statements, each party will have five (5) minutes to address any technical or procedural issues with the Chair. The Chair shall have the authority to determine these issues in any reasonable manner that does not conflict with these rules or Chapter 2.78. The Chair's decision on these issues shall be final.



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HEARING CONT'D

- The parties shall have a maximum total of fifteen (15) minutes to make both their opening and closing statements. The parties shall have sole discretion as to how they apportion their time between their opening and closing statements.
- The complainant shall make their opening statement first. The respondent may then make their opening statement, or reserve making their opening statement until after the complainant concludes their case.



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HEARING CONT'D

- All evidence, including witness information, to be introduced by the respondent at the hearing must be filed with the City Clerk's Office no later than twenty (20) calendar days prior to the date set for the hearing.
- No evidence, including witnesses, shall be allowed into evidence at the hearing except where a majority of the Hearing Panel finds by majority vote that the discovery of such evidence or witness came to the awareness of the proponent after the filing of the complaint or reply and that the proponent disclosed such evidence or witness information to the City Clerk as soon as practicable after becoming aware of the evidence or witness.



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HEARING CONT'D

- Technical rules of evidence do not apply. Any relevant evidence, as determined by the Hearing Panel at the pre-hearing conference, shall be admitted. The Hearing Panel shall be the sole determiners of the weight to be given to all admitted evidence. The Chair shall have the authority to exclude evidence if it is duplicative, or if its admission will necessitate undue consumption of time.
- Oral evidence shall be taken only under oath. The oath shall be administered by the City Clerk or their designee.



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HEARING CONT'D

- Each party shall have these rights:
 - (1) To call and examine witnesses;
 - (2) To introduce evidence as determined by the Hearing Panel at the pre-hearing conference;
 - (3) To cross-examine opposing witnesses on any matter relevant to the issues covered in the direct examination; and
 - (4) To impeach any witness regardless of which party first called the witness to testify.



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HEARING CONT'D

- The complainant shall present their case first.
- Upon the conclusion of the complainant's case, the respondent may make their opening statement, if reserved, and then shall present their case.
- All evidence, including witness information, to be introduced by the complainant at the hearing must be filed with the complaint alleging a violation of RMC Chapter 2.78.



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HEARING CONT'D

- Neither party shall be allowed to call the other party as a witness as part of the presentation of their case. However, a party may cross-examine the other party as to the testimony of the party but not as to statements of argument.
- A party may re-direct and re-cross witnesses, subject only to the limitations imposed by the Chair.



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HEARING CONT'D

- A party may present rebuttal evidence. The complainant may present rebuttal to the public official's evidence following the completion of the public official's presentation of evidence. The public official may present rebuttal to the complainant's evidence during the public official's presentation of evidence. The public official may also rebut the complainant's rebuttal evidence following the complainant's presentation of rebuttal evidence. Rebuttal evidence must be evidence directly or indirectly refuting the evidence presented by the other party.
- The Chair shall be the final decision maker concerning any objections raised by the parties.



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HEARING CONT'D

- If the parties reserved time for a closing statement, each party may make a closing statement beginning with the complainant.
- Upon the conclusion of closing statements, if any, the Chair shall facilitate discussion and deliberations by the hearing Panel.
- The final decision of the Hearing Panel shall be made by a formal motion with a second and approved by a majority vote of the Hearing Panel.



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HEARING CONT'D

- A Written Statement of Findings and Decision setting forth the final decision of the Hearing Panel shall be prepared and placed on the agenda for the next regularly scheduled meeting of the Board of Ethics that is at least fourteen (14) calendar days after the date of the final decision by the Hearing Panel for a vote by the members of that Hearing Panel only. Upon a majority vote by the members of the Hearing Panel, the Statement of Findings and Decision shall be the final decision of that Hearing Panel.



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III. MISCELLANEOUS

- The complainant shall have the burden of proof by a preponderance of the evidence standard. Preponderance of evidence means evidence that is more convincing, and therefore, more probable in truth and accuracy.
- The Hearing Panel may set time limits for parties to present evidence at the hearing.
- During the hearing, any member of the Hearing Panel may ask questions of parties or witnesses.



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