

**Metropolitan Board of Ethical Conduct  
Minutes of Meeting**

Wednesday, March 28, 2018

The Board of Ethical Conduct held an adjourned meeting on this date in Metropolitan Council Committee Room 2 of the Historic Courthouse in Nashville, Tennessee.

Persons in attendance:

Josiah Reid, Board Chair  
Mariah Cole, Board Vice Chair  
Diane DiIanni, Board member  
Keith Frazier, Board member  
Larry Patton, Board member  
Burkley Allen, Deputy Council Pro Tempore

Kevin Klein, independent legal counsel/Department of Law designee  
Elizabeth Waites, Metropolitan Clerk/Board secretary

Call to order

Mr. Reid called the meeting to order at 2:59 p.m.

Approval of Minutes of March 7, 2018

Mr. Frazier moved to approve the minutes of the last called meeting of the Board of Ethical Conduct. Ms. DiIanni seconded the motion, and the minutes were adopted by a unanimous vote of the Board.

Announcement of Appeal Rights

The Clerk announced that parties are encouraged to consult an attorney to evaluate appeal rights they may have from a final order issued by this Board in order to ensure that applicable procedures and deadlines are met.

Discussion of Proposed Policies and Procedures for Hearings

Legal counsel gave a description of proposed Hearing Procedures. Mr. Frazier moved to approve the procedures as drafted, with amendments as follows: that subsections E and G be deleted and the remaining subsections renumbered; and that a sentence be added to the Purpose section which states, "Pre-hearing procedures are contained in the Metropolitan Code of Laws § 2.222.040(C)." Ms. Cole seconded the Motion, which passed by the following roll call vote: "Ayes" Ms. Cole, Mr. Frazier, Mr. Patton, and Mr. Reid (4); "Noes" Ms. DiIanni (1).

Mr. Frazier moved to amend the Purpose section of the Procedures as adopted, by adding a subsection "A" which would contain the language previously approved by the Board, and add a subsection "B" which would contain the following language: "The board encourages, where

appropriate, for the parties to voluntarily discuss with each other the concerns raised in the complaint in order to avail themselves of any opportunity for informal resolution of the matter. Efforts at resolution, while encouraged, are not required.” Mr. Patton seconded the motion, which was adopted by a unanimous voice vote of the Board.

Adjournment

Mr. Frazier moved to adjourn the meeting, which motion was properly seconded and unanimously approved by a voice vote of the Board at 4:06 p.m. This Board is adjourned until its next called meeting.

ATTEST:

APPROVED:

/s/ Elizabeth Waites  
Metropolitan Clerk

/s/ Josiah Reid  
Chair of the Board

## BOARD OF ETHICAL CONDUCT

### I. PROCEDURES AND ORGANIZATIONAL RULES

#### 1. Purpose

To establish a written policy governing the internal organization of the Council Board of Ethical Conduct (“Board”), and formal procedures for the conducting of affairs entrusted to the Board as prescribed by Metropolitan Code of Laws § 2.222.040.

#### 2. Procedures

- A. **Annual election of officers.** The Board shall meet at least annually, effective on the date of adoption of this policy. The council member pro tempore is eligible to serve as an officer.
- B. **Filing of complaints.** Complaints must be filed with the Metropolitan Clerk (“Clerk”). The office of the Clerk is located at 1 Public Square, Suite 205, Nashville, TN 37201 and its regular business hours are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding observed holidays. The complaint filed with the Clerk must be signed by the complainant and notarized, and must contain the following: (1) Complainant's legal name, current mailing address, and a valid telephone number and/or email address; (2) Name of the person or persons who committed the alleged violation(s); (3) Summary of the facts giving rise to the complaint; and (4) Explanation of why those facts constitute a violation of the Standards of Conduct pursuant to Metropolitan Code of Laws § 2.222.020.

The Clerk will notify the complainant of this policy.

- C. **Department of Law’s report and process for meeting to evaluate the report.** The Department of Law shall provide its report regarding the complaint to the Chair of the Board and shall file the report with the Clerk. The Clerk will provide a copy of the Department of Law’s report via email and U.S. mail to each Board member as soon as practicable. Upon receipt of the Department of Law’s report, the Chair of the Board will call a meeting of the Board to evaluate the complaint. The Clerk will coordinate with Board members to secure a date and time for the meeting to evaluate the Department of Law’s report. The Clerk shall provide notice of the meeting to the public, Director of Law, the complainant, and persons named in the complaint. Notice of the meeting shall be provided to the complainant via email if available and U.S. mail.
- D. **Procedures at meeting to evaluate Department of Law’s report.** At the meeting called by the Chair, the Board shall consider the averments contained within the complaint and the report submitted by the Department of Law. Upon conclusion, the Board shall make a determination of whether to set a hearing on the complaint or whether to dismiss the complaint, in whole or in part. No testimony will be taken at the meeting to evaluate the Department of Law’s report. No written materials other than the

complaint and the Department of Law's report will be considered at the meeting. The Clerk shall record the actions taken by the Board.

~~E. **Procedure upon existence of a vacancy.** If the Metropolitan Clerk becomes aware of a vacancy on the Board, the Clerk shall notify the appointing organization. The appointing organization shall file with the Metropolitan Clerk evidence of its selection of the member to fill the vacancy.~~

## II. HEARING PROCEDURES

### 1. Purpose.

A. To establish written procedures outlining the method and mode of proof and argument for hearings under Metropolitan Code of Laws § 2.222.040(C)(2). ~~Pre-hearing procedures are contained in the Metropolitan Code of Laws § 2.222.040(C).~~

~~B. The board encourages, where appropriate, for the parties to voluntarily discuss with each other the concerns raised in the complaint in order to avail themselves of any opportunity for informal resolution of the matter. Efforts at resolution, while encouraged, are not required.~~

### 2. Procedures.

A. **Professionalism.** Hearings shall be conducted in a professional manner.

B. **Order of Proceedings.** Both parties have the right to testify, produce and examine witnesses, cross-examine adverse witnesses, and introduce such other evidence that is relevant and material to the issues determined by the Board. The order of the proceedings shall be as follows:

- i. Hearing is called to order.
- ii. Any preliminary motions, stipulations, or agreed orders are entertained.
- iii. **Opening Statements.** Both parties may, but are not required to, present opening statements to the Board. If the parties so elect, the complainant shall present his or her opening statement, followed by the respondent.
- iv. **Presentation of Evidence.**
  - a. **Complainant's Case in Chief.** The complainant shall present evidence supporting his or her case against the Respondent. For each witness called, the complainant questions, the respondent cross-examines, the complainant redirects, and the respondent re-crosses.
  - b. **Respondent's Case in Chief.** The respondent may present evidence supporting his or her case. For each witness called, the respondent questions, the complainant cross-examines, the respondent redirects, and the complainant re-crosses.
  - c. **Rebuttal.** After the respondent rests, the complainant may present rebuttal evidence in the mode set forth in section iv.a.
- v. **Closing Arguments.** After the close of evidence, the parties may present closing arguments. If the parties so elect, the complainant shall present his or

her closing argument, followed by the respondent, followed by a rebuttal by the complainant.

C. **Burden of Proof.** The complainant shall have the burden of proving the alleged violation by a preponderance of the evidence.

D. **Board Discretion.** The Board has discretion to limit the number of witnesses and time permitted for each party to present evidence and argument.

~~E. Admission of Evidence. The standard for admissibility of evidence is set forth at Tenn. Code Ann. §4-5-313, which governs the admissibility of evidence in contested cases under the Uniform Administrative Procedures Act.~~

F.E. Legal Counsel. The Board may call on its legal counsel for input at any stage of the proceedings. The Board may enter into Executive Session to hear and consider advice from the Board's attorney.

~~G.F. Briefs on Legal Issues. Where deemed necessary, the Board may request briefs on relevant legal issues from the parties.~~