

State Board of Ethics Rules of Practice and Procedure

(By authority conferred by § 6 of 1973 PA 196, MCL 15.346)

These rules became effective upon filing with the Secretary of State on February 15, 2006.

R 15.1 Definitions.

- (1) As used in these rules:
 - (a) "Act" means 1973 PA 196, MCL 15.341 to 15.348.
 - (b) "Advisory opinion" means a written opinion of the board concerning the possible unethical conduct of the person requesting the opinion, or the possible unethical conduct of an employee or public officer working under the jurisdiction or supervision of the person requesting the opinion.
 - (c) "Board" means the board of ethics.
 - (d) "Complaint decision" means a determination of conduct by a public officer or employee made by the board on the complaint of a person or entity.
 - (e) "Employee" means an employee, classified or unclassified, of the executive branch of this state.
 - (f) "Executive secretary" means the person designated as such in accordance with section 4 of the act.
 - (g) "Expunge" means the elimination, pursuant to statute or court order, of copies of all documents regarding a case, except the original documents and any legal analysis necessary to support the board's decision.
 - (h) "Public officer" means a person appointed by the governor or another executive department official.
 - (i) "Suppress" means denial of public access to information acquired by the board acting in its official capacity.
 - (j) "Unethical conduct" means a violation of the standards in R 15.2.

R 15.1a Scope.

The board shall receive complaints concerning alleged unethical conduct by a public officer or employee from any person or entity, inquire into the circumstances surrounding the alleged unethical conduct, and make recommendations concerning individual cases to the appointing authority with supervisory responsibility for the person whose activities have been investigated. The board shall also initiate investigations of practices that could affect ethical conduct of a public officer or employee. The board shall issue and publish advisory opinions upon request from a public officer or employee or their appointing or supervisory authority relating to matters affecting ethical conduct of a public officer or employee.

R 15.2 Standards of conduct as provided; public officer or employee; prohibited conduct.

- (1) A public officer or employee shall not divulge to an unauthorized person confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.
- (2) A public officer or employee shall not represent his or her personal opinion as that of an agency.
- (3) A public officer or employee shall use personnel resources, property, and funds under the officer or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.
- (4) A public officer or employee shall not solicit or accept a gift or loan of money, goods, services, or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs official duties.
- (5) A public officer or employee shall not engage in a business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with his or her course of employment with the state.
- (6) Except as provided in MCL 15.342a, a public officer or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.
- (7) Except as provided in MCL 15.342.a, a public officer or employee shall not participate in the negotiation and execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the public officer or employee has a financial or personal interest.

R 15.3 Meetings of the board.

- (1) The board may meet to address pending issues as determined by the chairperson and noticed by the executive secretary. All meetings of the board are open to the public pursuant to the open meetings act. The board may hold closed, deliberative sessions when authorized by law, including, but not limited to, when, in the opinion of the board, the

protection of individual rights warrants a closed session. The chairperson shall determine the time allotted for individuals to address the board.

- (2) The chairperson shall preside at all meetings. In the chairperson's absence, the members of the board in attendance at which a quorum is present shall designate a temporary Chairperson to preside.
- (3) The executive secretary shall record the minutes of all meetings. Minutes of closed sessions shall be kept in a separate file. The executive secretary shall distribute minutes of all public meetings to each member of the board and will make them available to the public. The executive secretary shall stamp as confidential each page of minutes of closed deliberative sessions and distribute them only to the members of the board.
- (4) The documents concerning any complaint, request for an advisory opinion, or investigation constitute the records of the board.

R 15.4 Notice of public meeting.

Public notice of the board's meetings shall be provided in accordance with the provisions of the open meetings act. Not fewer than 28 calendar days before the date of the public meeting, the executive secretary will notify any interested party who has a matter before the board and shall post the notice on the board of ethics' official website address. The notice shall state the time, place, and date of the meeting.

R 15.5 Complaints and answers.

- (1) Any person or entity, known as the complainant, may file a complaint charging a public officer or employee with unethical conduct.
- (2) The complaint shall comply with all of the following requirements:
 - (a) Be in writing.
 - (b) Specify 1 or more of the standards of prohibited conduct outlined in section 2 of the act, MCL 15.342, that was allegedly violated.
 - (c) Include evidentiary facts supporting the allegations in the complaint.
 - (d) Contain a statement that the complainant or designee has read the complaint and knows its contents, and believes the alleged violations to be true.
 - (e) Contain the signature of the complainant or designee before a notary.
 - (f) Be filed with the executive secretary at the board office.
- (3) The executive secretary may administratively dismiss a complaint if the complaint fails to comply with subrule (2) of this rule.
- (4) The chairperson of the board may administratively dismiss a complaint for either of the following reasons:
 - (a) One or more complaints regarding the same matter are pending.

- (b) The board previously addressed the subject matter.
- (5) If it has been determined that a complaint complies with subrules (2) and (4) of this rule, then the executive secretary shall promptly serve a copy of the complaint on the person charged.
- (6) The person charged, or designee, shall file an answer with the executive secretary within 21 calendar days after service of the complaint. The executive secretary shall serve a copy of the answer upon the complainant. The executive secretary may grant an extension of time for filing the answer.
- (7) The answer shall comply with all of the following requirements:
 - (a) Be in writing.
 - (b) Include a response to each allegation raised in the complaint.
 - (c) Contain the signature of the person charged before a notary. If the answer is filed by an entity other than the person charged, then the person charged and the entity's designee filing the answer shall sign the answer before a notary.
- (8) Any additional written information a complainant or the person charged wants the board to consider must be simultaneously filed with the executive secretary and the opposing party no later than 21 calendar days before the date of the board meeting scheduled to address the complaint. The opposing party must submit any written response to the executive secretary no later than 14 calendar days before the date of the board meeting.
- (9) Upon expiration of the time provided for written submissions, the complaint, answer, and any other written submissions shall be presented to the board for its consideration at a meeting as noticed by the executive secretary. Upon presentation of the complaint and answer, the board may direct the executive secretary or the attorney general to obtain additional information regarding the complaint. Any information acquired by the executive secretary or the attorney general is confidential unless revealed by the board.
- (10) The complainant and the person charged shall have an opportunity to address the board at the meeting scheduled to address the complaint.
- (11) At any time, the board may issue a complaint decision based on any of the following reasons:
 - (a) The board lacks jurisdiction over the person subject to the complaint.
 - (b) The board lacks jurisdiction over the subject matter.
 - (c) The complainant lacks the legal capacity to file the complaint.
 - (d) The complaint is barred because of release, prior judgment, or other disposition of the claim before the complaint was filed.
 - (e) The complaint on its face fails to state a claim of unethical conduct.

- (12) If no genuine issue as to any material fact exists, then the board may issue a complaint decision without a hearing.
- (13) If the board determines that the complaint cannot be resolved under subrules (10) or (11) of this rule, the board may schedule a hearing in accordance with R 15.8.
- (14) The board shall issue a complaint decision. The executive secretary shall transmit copies of the board's decision to the complainant, the person charged with unethical conduct, and other persons as the board directs.

R 15.6 Advisory opinions.

- (1) An appointing authority, employee, or public officer of the executive branch may request an advisory opinion relating to matters affecting the ethical conduct of a public officer or employee. The request shall be in writing and filed at the board office with the executive secretary who shall present it to the board for consideration. Requests for advisory opinions need not be notarized.
- (2) The executive secretary may administratively dismiss a request for an advisory opinion if the request fails to comply with subrule (1) of this rule.
- (3) The chairperson of the board may administratively dismiss a request for an advisory opinion for either of the following reasons:
 - (a) One or more requests or complaints regarding the same matter are pending.
 - (b) The board previously addressed the subject matter.
- (4) Upon presentation of a request for an advisory opinion, the board may direct the executive secretary or the attorney general to obtain additional information regarding the request. Any information acquired by the executive secretary or the attorney general in the course of investigation is confidential unless disclosed by the board.
- (5) The person requesting the advisory opinion, and the person subject to the request, shall have the opportunity to speak to the board at the meeting scheduled to address the advisory opinion.
- (6) At any time, the board may issue an advisory opinion decision on the request based on any of the following reasons:
 - (a) The board lacks jurisdiction over the person subject to the advisory opinion.
 - (b) The board lacks jurisdiction over the subject matter.
 - (c) The person asserting the claim lacks the legal capacity to file the request for an advisory opinion.
 - (d) The request for an advisory opinion is barred because of release, prior judgment, or other disposition of the claim before the request for an advisory opinion was filed.
 - (e) The request for advisory opinion on its face fails to delineate any unethical conduct.

- (7) If no genuine issue as to any material fact exists, then the board may issue an advisory opinion without a hearing.
- (8) If the board determines that the request for an advisory opinion cannot be resolved under subrules (6) and (7) of this rule, then the board may schedule a hearing in accordance with R 15.8.
- (9) The executive secretary shall transmit copies of the board's order to the party filing the request, the person subject to the request, and other persons as the board directs.

R 15.7 Investigations initiated by the board.

- (1) The board may direct the executive secretary or attorney general to make an informal investigation of any practice that could affect the ethical conduct of a public official or employee. The investigation and its results shall not be disclosed except to the board.
- (2) The board may vote to initiate an investigation upon a board member's duly made motion.
- (3) If the board determines that there is reasonable cause to conclude that the practice could affect the ethical conduct of a public officer or employee and that substantial factual matters are in dispute, then the board shall schedule a meeting on the practice. The executive secretary shall send notices of the meeting to parties of interest.
- (4) If the board determines that there are no reasonable grounds to conclude that the practice could affect ethical conduct, then it shall terminate the investigation and the executive secretary shall provide prompt written notice of the termination to all persons of whom inquiry was made. The board may issue a report of its actions.
- (5) If the board determines that the matter cannot be resolved under subrule (3) or (4), then the board may schedule a hearing.

R 15.8 Hearings.

- (1) The board may hold a hearing to further review the merits of a complaint, a request for an advisory opinion, or upon conclusion of an investigation.
- (2) Not fewer than 28 calendar days before the date of the hearing, the executive secretary shall notify any interested party and shall post the notice on the board's website. The notice shall state the time, place, date, case name, and questions to be heard at the hearing as determined by the board.
- (3) Hearings may be held before the entire board, before one or more designated voting members of the board, or before a hearing officer designated to conduct the hearing. If the hearing is conducted before the board or designated members, then the chairperson of the board shall preside over the hearings, or in the chairperson's absence, members of the board shall appoint a board member as presiding officer. A member of the board, a

hearing officer, agent or employee of the board shall not have direct or indirect ex-parte communication with any person in connection with any issue involved in a scheduled hearing except with the members of the board or its agents or employees.

- (4) The presiding board member or hearing officer shall do any of the following:
 - (a) Administer oaths as deemed appropriate by the board.
 - (b) Request the attendance of any witnesses whose testimony, in the judgment of the board, will aid in the conduct of its investigations.
 - (c) Request the production of books, papers, and other documentary evidence to aid the board in its investigation.
 - (d) Fix the time and form for the submission of evidence or argument.
 - (e) Adjourn a hearing for good cause to such time, date, and place as the presiding board member or hearing officer determines to be appropriate. The rules of evidence applicable in the courts of the state need not be applied strictly in any hearing.
- (5) The standard of review shall be the preponderance of the evidence. The complainant shall have the burden of introducing the requisite evidence to prove the alleged unethical conduct. The person requesting an advisory opinion or an investigation or the attorney general shall have the burden of presenting facts or issues to the board for its consideration. The person whose conduct is being questioned has all of the following rights:
 - (a) Be present.
 - (b) Be represented by counsel.
 - (c) Testify.
 - (d) Produce and examine witnesses.
 - (e) Cross-examine adverse witnesses.
 - (f) Introduce other evidence as may be material and relevant to the issues.
- (6) At the conclusion of the hearing, the presiding board member or hearing officer may request additional evidence or written argument concerning the subject matter to be submitted within such time and in the form as the presiding board member or hearing officer directs. The additional evidence or argument shall be disclosed to all interested parties.
- (7) The presiding board member or hearing officer shall issue a proposal for decision. The board shall act upon the proposal.
- (8) All proceedings shall be recorded but need not be transcribed unless requested by the board or a participating party. The board shall determine the amount and source of payment for the transcript. The board shall prepare an official record of its hearing, to

include the notice of hearing, and all documents considered by the board. The board may also include a transcript of evidence presented at the hearing.

R 15.9 Board determinations; publications; access.

- (1) The board shall publish its decisions and opinions, including dissents, and make them available for public inspection at its office, on its website, and in the appropriate state agencies.
- (2) The board may direct the executive secretary to designate the record, or portion of the record, supporting or concerning any complaint, advisory opinion or investigation as a suppressed record, where public disclosure would constitute a clearly unwarranted invasion of an individual's privacy or where disclosure is prohibited by law.
- (3) The board shall deny public access to the original document and any legal analysis necessary to support the decision of the board in a case where the record has been expunged.

R 15.10 Representation by legal counsel.

Interested parties attending a meeting or witnesses requested to testify at a hearing at the request of the board, the complainant, or the person charged with unethical conduct have the right to be represented by legal counsel.