

APPENDIX C

REGULATIONS FOR ADJUDICATORY PROCEEDINGS

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1. Intent and Purpose.

The Board of Ethics of Orange County has statutory authority to follow rules and regulations governing the conduct of adjudicatory proceedings and appeals relating to compliance with this local law and the conduct of hearings held thereunder.

These rules and regulations shall apply to all proceedings undertaken by the Board. Persons subject to the requirements of the law shall be entitled to receive an adjudicatory proceeding as to every action or decision as to them taken by the Board, including but not limited to extensions of time, waivers and/or exemptions from the disclosure requirement.

2. Definitions

- No.** (a) "Board" shall mean the Board of Ethics established pursuant to Local Law **of 2015.**

(b) "Annual Statement" shall mean the annual statements of financial disclosure which are required to be filed with the Board pursuant to Local Law No. 1 of 1991.

(c) "Hearing Officer" shall mean the presiding officer in adjudicatory hearings or proceedings conducted pursuant to these regulations, who shall be independent of the Board and of the County of Orange, and shall be provided by the County.

(d) "Hearing" shall mean an adjudicatory proceeding held by the Board to determine whether a violation of Local Law No. ____ of 2015, has occurred.

3. Notice of Hearing or Proceeding (form).

(a) Where the Board elects to go forward with a proceeding to determine compliance with the requirements of State and local law, or to take such other action as may be authorized by law, the Board shall serve a written notice, by certified mail or other appropriate method of service authorized under the Civil Practice Law and Rules, to the parties and their representatives of record at least twenty (20) calendar days prior to the date of any hearing or proceeding under these rules. The Notice of Hearing or Proceeding shall contain the following:

- (i) a statement of the time and place of the hearing or proceedings;
- (ii) a statement of the nature of the hearing or proceeding;
- (iii) a reference to the particular statutes and rules relevant to the hearing or proceeding;
- (iv) a short, plain language statement of violations asserted, if any; and
- (v) a statement for hearing impaired parties and participants concerning the provision of deaf interpretation services without charge.

(b) A copy of these regulations shall accompany each Notice of Hearing or Proceeding which is sent pursuant to these regulations.

(c) The Notice of Hearing or Proceeding shall contain information concerning circumstances under which an adjournment may be granted and the result of failure to appear for a scheduled hearing or proceeding.

(d) The Notice of Hearing or Proceeding shall inform the parties and their representatives of the right of each party to be represented, to testify, to produce witnesses, to present documentary evidence, and to examine opposing witnesses and evidence.

4. Time and Place of Hearing or Proceeding.

(a) The time and place of the hearing or proceeding shall be contained in the Notice of Hearing or Proceeding.

(b) The time and place of the hearing or proceeding shall not be changed unless a party formally requests a change pursuant to the adjournment request procedure contained in Section 8.

(c) The time and place of the hearing or proceeding shall, as far as practicable, take into account the convenience of the parties and the availability of witnesses.

5. Evidence and Proof.

(a) The formal rules of evidence do not apply to adjudicatory hearings or proceedings conducted pursuant to these rules. However, the rules of privilege recognized by law shall be given effect. Objections to evidentiary offers may be made and shall be a part of the record. Subject to these rules, any party may, for the purpose of expediting the hearing or proceeding and when the interests of the parties will not be substantially prejudiced thereby, submit all or part of the evidence in written form.

(b) The hearing officer may exclude irrelevant or unduly repetitive evidence or cross-examination from any hearing or proceeding.

(c) The burden of proof shall be upon the Board of Ethics to establish by clear and convincing evidence the facts and findings which support its decisions, including but not limited to a finding that non-compliance with the requirements of law has had

or will have a material bearing on the discharge of the official duties of the person subject thereto.

(d) No decision or determination by the hearing officer or the Board shall be made except on consideration of the record as a whole, or such portions thereof as may be cited by any party to the hearing or proceeding and as supported by and in accordance with substantial evidence.

(e) Each party shall have the right of cross-examination.

(f) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the Board. When official notice is taken, every party shall be given notice thereof and shall, on timely request, be afforded an opportunity prior to decision to dispute the fact or its materiality.

(g) All findings of fact shall be based exclusively on the evidence in record and on matters officially noticed.

(h) In making its findings and decisions and carrying out its duties with regard to ensuring compliance with State and local ethics laws, the Board shall in every case evaluate whether any non-compliance by any person subject thereto affects in any manner the ability of such person to fully and faithfully carry out the responsibilities and duties of their position. Only if the Board finds by clear and convincing evidence that information required to be reported has a material bearing on the discharge of the reporting person's official duties, and that such information was willfully omitted or inaccurately reported, can the enforcement and punitive powers of the Board be exercised.

6. Representation.

Any person compelled to appear in person, or who voluntarily appears in any hearing or proceeding conducted according to these rules, shall be accorded the right to be accompanied, represented, and advised by counsel. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others in any hearing or proceeding therein.

7. Oaths.

(a) All oaths required by these rules may be taken before any person authorized to administer oaths within the State of New York.

(b) Oaths shall be administered to all witnesses who testify or appear in any hearing or proceeding conducted pursuant to these rules.

8. Adjournments.

(a) Adjournments of any hearing or proceeding conducted pursuant to these rules shall be granted only for good cause.

(b) Written request for adjournment shall be submitted to the hearing officer in the hearing or proceeding for which the adjournment is sought. The request must be accompanied by an affidavit which contains sufficient detail to allow the hearing officer to rule on the request.

9. Time Limits.

(a) Under these rules, adjudicatory proceedings shall be conducted in an expeditious manner with all due regard for the rights of the parties concerned. Every effort should be made by the parties to effectuate a speedy disposition of the case.

(b) Parties to any hearing or proceeding are required to file all papers, statements, proofs, and other evidence with the hearing officer at a time to be designated by the officer. An extension of time for filing those items will be granted by the hearing officer only upon formal request.

10. Decision after Hearing or Proceeding.

(a) All final recommendations of the hearing officer and all decisions and determinations of the Board shall be in writing or stated in the record and shall include findings of fact, conclusions of law, and reasons for the decision or determination and, when appropriate, shall direct that specific action be taken by the parties. The final decisions or determinations of the Board shall be binding upon the Board.

(b) A copy of all final decisions and determinations of the Board and recommendations of the hearing officer shall be made available to the parties to the hearing or proceeding, and shall be delivered or mailed forthwith to each party and to its representative of record.

(c) Except as required for the disposition of ex parte matters authorized by law, members of employees of the Board assigned to make a determination or decision, or to make findings of fact and conclusions of law in any hearing or proceeding, shall not communicate directly or indirectly, in connection with any issue of fact, with any person or party, nor in connection with any issue of law, with any party or its

representative, except upon notice and opportunity for all parties to participate. Any member or employee of the

Board may communicate with other members or employees and may have the aid and advice of agency staff, other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or a factually related case.

(d) The Board shall maintain the final decision or determination in any hearing or proceeding in a file with an index by name of party and subject matter. The index and the notice of civil assessment, if any, shall be made available for public inspection and copying except as provided in Section 16 of these rules. Each decision or determination shall be so filed and indexed within sixty (60) days after having been rendered.

11. Conduct of Hearings.

The hearing officer, exercising discretion, may elect by a super majority vote of its members to conduct any hearing or proceeding under these rules ex parte after a showing that the party who is the subject of the hearing and its representative of record have been notified by certified mail of the pending hearing or proceeding or otherwise served with notice of the hearing. The party who is the subject of the hearing shall at no time be deprived of the opportunity to appear. However, if a party has been served with two (2) written notices of a hearing and fails to appear after each notice, the hearing officer, upon proof of service, shall have the authority to proceed with the scheduled hearing. Proof of service shall consist of a signed certified mail receipt or affidavit.

12. Hearing Officers.

a. Conducting Hearings or Proceedings.

All hearings or proceedings under these rules shall be conducted by a hearing officer, retained and provided by the County of Orange, who shall have the power and authority of presiding officers or hearing officers as defined by the State Administrative Procedure Act (SAPA), any other pertinent statute or local law, ordinance, or resolution, and these regulations. The hearing officer shall be an individual who has in no way been involved with the action or proceeding in question.

b. Selection of Hearing Officers.

Each year, the Board of Ethics shall select a panel of five (5) individuals, licensed to practice law in the State of New York to serve as Hearing Officers during the year. A hearing officer shall be an individual who has in no way been involved with the action or proceeding in question.

13. Powers and Duties of Hearing Officer.

A hearing officer is authorized to do the following in any hearing or proceeding to which he or she is assigned:

- (a) administer oaths and affirmations;
- (b) at the request of any party, sign and issue subpoenas in the name of the Board requiring the attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence. Subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall affect the authority of an attorney for a party to issue subpoenas under the Civil Practice Law and Rules;
- (c) provide for the taking of testimony by deposition;
- (d) regulate the course of the hearings, set the time and place for continued hearings and the time for filing of briefs and other documents;
- (e) direct the parties to appear and confer to consider the simplification or settlement of the issues by consent of the parties; and
- (f) prepare findings of fact and recommendations.

14. Fines, Penalties.

(a) At the close of the hearing or proceeding, the hearing officer shall make findings of fact and a recommendation as to the appropriate penalty or fine to be assessed or any other action to be taken. The proposed findings of fact and recommendation shall be transmitted to the Board for approval and simultaneously mailed or delivered to the parties to the proceeding. The parties shall have an opportunity to respond in writing, in the form of a brief, to the findings of fact and recommendation of the hearing officer, and such written response shall be directed to the Board for its consideration within fifteen (15) days after the service of the hearing

officer's findings and recommendations upon the parties. In their brief submitted in response to the findings of fact and recommendation of the hearing officer, the parties may not submit or discuss evidence which is not a part of the official record of the hearing or proceeding. The Board shall act on the findings of fact and recommendation as expeditiously as possible. The Board may affirm or reverse the findings of fact and recommendation of the hearing officer in whole or in part, or it may remand and/or dismiss the proceeding based upon the record produced at the hearing.

(b) The assessment of civil penalties under the applicable law and procedures shall not preclude the referral of an appropriate violation to a prosecutor for prosecution of criminal charges, except where the violation is imposed under General Municipal Law Section 812(6) for failure to file or a false filing of an annual statement.

(c) If the alleged violation has been established, and the Board determines in light of all the circumstances that the violation is not serious enough to warrant assessment of a civil penalty, or if the imposition of civil penalties is not otherwise authorized by law, the Board in its discretion may take such other action as appropriate, including but not limited to a written admonition or a recommendation that disciplinary action be taken or a referral to a prosecutor for prosecution of criminal charges. The Board may forward a copy of such admonition or a recommendation for disciplinary action to the individual's appointing authority, as appropriate.

15. Record of Hearing or Proceeding.

- (a) The record in hearing or proceeding under these rules shall include:
- (i) all notices, pleadings, motions, and intermediate rulings;
 - (ii) evidence presented;
 - (iii) a statement of matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
 - (iv) questions and offers of proof, objections thereto, and rulings thereon;
 - (v) proposed findings and exceptions, if any;
 - (vi) any findings of fact, conclusions of law, or other recommendations made by the hearing officer; and

(vii) any decision, determination, opinion, order, or report rendered.

(b) The Board shall make a complete record of all hearings and proceedings conducted before it. For this purpose, unless otherwise required by statute, the Board may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Within a reasonable time after the Board gives notice of its decision, determination, opinion, or order, but before commencement of judicial review, any party to the hearing or proceeding may request the Board to prepare the record or any part thereof, together with any transcript of the hearing or proceeding or any part thereof. The Board shall then prepare the requested portions of the record and transcript within a reasonable time and furnish a copy to the requesting party at no charge.

16. Privacy/Confidentiality.

All records of the Board shall be subject to disclosure in accordance with the provisions of article six of the public officers law,

(b) In accordance with Local Law No. ____ of 2015, all meetings or proceedings of the Board of Ethics shall be subject to ~~the~~ the provisions of article seven of the public officers law,

(c) Any information which would reveal confidential material protected by Federal or State statute shall be deleted from any final decision, order, determination, or declaration issued by the Board.

17. Savings Clause.

All matters commenced by written notice may be under the prior Orange County Code of Ethics (Local Law No.2 of 1994____ as amended) will be governed by the laws and adjudicatory rules in effect prior to the effective date of this Part and will remain in full force and effect for the pendency of those matters. All investigations commenced after the adoption of Local Law No. ____ of 2015 will be governed by provisions of this Part.

8/24/15 ON DESK