



## City of Atlanta Rules of the Board of Ethics<sup>i</sup>

### Rule 1. Jurisdiction

1.1 Ethics Jurisdiction. The Board of Ethics has jurisdiction to consider matters that are raised in connection with sections 2-801 to 2-824 of the City of Atlanta's Code of Ordinances, commonly known as the Code of Ethics.

### Rule 2. Formal Advisory Opinions

2.1 Written Request Required. The Code of Ethics gives the Board of Ethics the authority to render advisory opinions based on a real or hypothetical set of circumstances. The request must be in writing and come from a city official, employee, board member, or other individual who is personally involved in a matter requiring interpretation of the ethics code.

2.2 Content of Opinions. The board shall consider any request for an advisory opinion at its next regularly scheduled board meeting and attempt to issue an opinion within 90 days of the request. Each board opinion shall be in writing and state the facts, issue presented, decision of the board, and reasons for its ruling. A majority vote of the members present at any meeting shall govern the board's decision, provided that at least four members vote.

2.3 Guidance on Future Conduct. Advisory opinions are intended to provide guidance to officials and employees on proposed future conduct or actions.

2.4 Discretion of the Board. The Board has the discretion to determine when to issue an advisory opinion and reserves the right to decline to answer a question raised. Among the factors considered in deciding when to issue an opinion are:

- (a) does the issue fall within the board's jurisdiction,
- (b) does the opinion provide guidance on future conduct,
- (c) does the question raise a new policy issue,
- (d) is the issue one of general application that may affect others,
- (e) is the issue likely to be the subject of a controversy or dispute, and
- (f) does the board need to reconsider a previous opinion due to changed facts or circumstances.

2.5 Distribution. Copies of the board's formal advisory opinions shall be sent to the Mayor, City Council President, and City Council members and posted on the Board of Ethics website.

2.6 Reliance on Opinion as Defense to Complaint. Individuals who fully disclose all relevant facts may rely on the opinion for guidance, and their compliance with the opinion shall serve in mitigation in any proceeding brought against them for violating the Ethics Code.

2.7 Outside Employment Requests. The Code of Ethics gives the board responsibility for approving outside employment of all employees who work as department heads, deputy

department heads, and bureau directors. The request must be in writing and state the type and place of employment, the proposed work hours, and the employer's name and address. The board shall provide written approval or disapproval within 30 days. If no board meeting is scheduled during the 30-day period, then the members of the advice committee shall review the request and report the committee's decision to the full board at its next regularly scheduled monthly meeting.

### **Rule 3. Informal Advice**

3.1 Verbal or Written Request. The Ethics Code gives the ethics officer the duty to advise all city officials and employees about the provisions of the code. The official or employee may seek advice in writing, over the telephone, or in person.

3.2 Time and Content of Opinions. The ethics officer shall respond to each request in a timely manner. Routine inquiries should be answered within seven days and no later than fourteen days after receipt. The ethics officer may give a written or verbal response. When the ethics officer writes an informal advisory letter that addresses an issue that the board has not previously considered, the letter should state that it is the ethics officer's informal opinion and not the formal opinion of the board.

3.3 Referral of Issues to Board. The board's chairperson shall appoint a committee on advisory opinions composed of three board members with whom the ethics officer can consult as needed about the proper interpretation of the code. The committee shall periodically review the informal written advice of the ethics officer to determine whether any question should be referred to the board for its review. In addition, the ethics officer may bring any inquiry or informal advisory opinion involving a novel, recurring, or unsettled issue before the board for its consideration.

3.4 Public Record. Both formal and informal opinions are subject to the Open Records Act, and the formal advisory opinions shall be posted on the board's website.

3.5 Reports to the Board. The ethics officer shall report annually to the board on advice given during the year.

### **Rule 4. Complaints**

4.1 Reporting Violations. Any person or entity may report a violation of the Code of Ethics by filing a written complaint with the Ethics Office or Board of Ethics on a form prepared by the office or by communicating with the ethics officer.

4.2 Written Complaints. To be considered, any written complaint should contain the following information:

- (a) the name and address of the person filing the complaint;
- (b) the name and address of the party against whom the complaint is filed;
- (c) a clear and concise statement of facts on which the complaint is based, including dates, times, places, and actions;
- (d) a general reference to the provisions of the Code of Ethics that apply;
- (e) any further information that might support the allegations, including the names, phone numbers, and addresses of other persons with knowledge of the facts and any documents that support the allegations; and
- (f) the sworn verification and signature of the person filing the complaint.

4.3 Anonymous Complaints. The ethics officer may also receive anonymous complaints that are made in good faith and with sufficient specificity to provide salient and investigable facts. Any complaint should identify the following:

- (a) the person who is alleged to have committed the violation,
- (b) the facts on which the complaint is based,
- (c) the provisions of the ethics code that have been violated, and
- (d) any evidence that may support the allegations.

4.4 Initiation of Complaints. The Board of Ethics or ethics officer may, on their own initiative, determine that a violation may exist and prepare a written complaint. They may also amend a previously filed complaint by adding allegations supported by the facts or dismissing allegations that do not constitute a violation of the Code of Ethics.

4.5 Review for Jurisdiction. The ethics officer shall determine within five business days of receipt of a complaint whether it alleges a violation of the City of Atlanta's Code of Ethics. If the ethics complaint does not contain the necessary information under rule 4.2 or 4.3, the ethics officer shall advise the complainant of the defect and the need to correct it before the complaint will be considered. If the ethics officer determines that the complaint does not allege any act that, if true, would constitute a violation of the Code of Ethics, then the ethics officer shall dismiss the complaint and notify the complainant without requiring any formal board action.

4.6 Notice to Respondents. Upon the ethics officer determining that a complaint meets the requirements in rules 4.2, 4.3 and 4.5, the ethics officer shall send written notice by the next business day to the respondent against whom the complaint was filed. A copy of the complaint and any supporting documents, if available, shall accompany the notice.

4.7 Response to Allegations. The respondent shall file a written response to the complaint within 30 days of its receipt.

4.8 Confidentiality and Public Disclosure. Each complaint shall be deemed a separate pending investigation at the time it is reported. The board's records in any pending investigation are exempt from disclosure under the Georgia Open Records Act. Complaints shall be made publicly available on request ten days after the ethics officer closes the case as not sustained or sends the probable cause report to the board.

4.9 Reports to the Board. The ethics officer shall report annually to the board on the complaints received and their disposition.

## **Rule 5. Investigations**

5.1 Preliminary Investigation of Complaint. The ethics officer shall conduct a preliminary investigation of any complaint over which the Board of Ethics has exclusive jurisdiction.

5.2 Initiation of Investigations. The ethics officer may initiate an investigation into suspected violations of the Code of Ethics as necessary. The board also has the authority to investigate any alleged violation based on a sworn written complaint by any person, the request of the ethics officer, or a decision by a majority of the board that the matter should be investigated.

5.3 Referral to Other Agencies. If another city employee, department, or agency is investigating the same complaint or similar allegations, the ethics officer may defer any investigation until the other investigation or proceeding is completed. In addition, the ethics officer may refer a complaint for investigation to other departments or agencies that have authority over the matter.

Complaints that allege violations of criminal laws shall be reported to the appropriate city, state, or federal law enforcement agencies.

5.4 Administrative Dismissal. The ethics officer may dismiss a complaint when a preliminary investigation determines that the board does not have jurisdiction, the board has previously considered and dismissed similar allegations, the evidence does not support the allegations, or the complaint expresses conclusions or opinions without any specific, actionable allegations. The ethics officer shall provide a quarterly report to the board on all complaints that are dismissed administratively.

5.5 Subpoenas. The board may issue subpoenas to compel any person to appear, give sworn testimony, or produce documents or other evidence during an investigation or hearing before the board. Persons who fail to respond to subpoenas may be subject to penalties.

5.6 Probable Cause Report. After conducting an investigation, the ethics officer shall provide a written report to the board. The report shall state the officer's findings and recommendation concerning whether there is probable cause to believe that the Code of Ethics has been violated. "Probable cause" means cause that would induce a reasonably intelligent and prudent person to believe that a person has committed an act constituting a violation of the City's Code of Ethics.

5.7 Notice of Respondent. The ethics officer shall send a copy of the probable cause report to the respondent and give notice of a hearing date. Any respondent who wishes to appear before the board must first file a written response to the probable cause report, stating the facts and issues on which the respondent disagrees with the report. The response is due 14 days from the date the probable cause report is received. Failure to file a written response will constitute a waiver of the respondent's right to address the board.

5.8 Probable Cause Hearing. The ethics officer and respondent or their representatives shall present arguments to the board at a public hearing on the issue of probable cause. The probable cause hearing is not an evidentiary hearing.

5.9 Probable Cause Decision. After hearing arguments and reviewing the probable cause report and response, the board shall determine whether there is probable cause that the person has violated a provision of the Code of Ethics. If the board determines that probable cause does not exist, it shall dismiss the complaint and notify the complainant and respondent of its decision.

## **Rule 6. Enforcement Hearings**

6.1 Notice of Hearing. After a finding of probable cause, the board shall give notice to the complainant and respondent and set the matter down for a public hearing to determine whether a violation of the Code of Ethics has occurred. The notice shall state the specific provisions of the ethics code alleged to have been violated.

6.2 Pretrial Conference. A pretrial conference shall be held between the ethics officer and respondent to identify the disputed facts and issues for the board to decide.

6.3 Record of Hearing. The board may contract for the services of a court reporter or a person adept at shorthand reporting or mechanical transcribing devices to take down the proceedings at the enforcement hearing.

6.4 Board's Legal Counsel. The board may request that the city attorney provide an attorney from that office to advise the board. In the event of a conflict with the city attorney's office, the board may select another attorney to provide pro bono services to the board.

6.5 Testimony. All testimony shall be under oath, which the presiding officer shall administer to the witnesses. The members of the Board of Ethics may question witnesses.

6.6 Rights of Witnesses. Any person who appears before the board shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts in the state. The board shall be fundamentally fair in its administration of evidence and follow the rules of evidence that apply in contested cases under the Georgia Administrative Procedures Act.

6.7 Rights of the Respondent. The respondent has the right to attend the hearing; be represented by counsel or another representative; present oral or written documentary evidence that is not irrelevant, immaterial, or unduly repetitious; and examine and cross-examine witnesses.

6.8 Rights of Persons Adversely Affected. Any person who is adversely affected by comments made during the hearing may appear personally before the board or file a written sworn statement for incorporation into the record.

6.9 Deliberations. At the conclusion of the proceedings concerning an alleged violation, the board shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of the members present whether there has been a violation. In no event shall a decision of the board be voted on by fewer than four members.

6.10 Standard of Evidence. The board's decision shall be governed by the preponderance of the evidence standard.

6.11 Public Disclosure. The board's findings and the record of the proceedings shall be made public as soon as practicable after the board has rendered its decision.

## **Rule 7. Disposition of Cases**

7.1 Disposition. At the end of the enforcement hearing, the board may dismiss the case if no violation is found. If a violation is found, the board may enter an order to cease and desist from all violations, order the filing or amending of any deficient disclosure statement, and impose any penalties provided by law.

7.2 Civil Penalties. The board may assess an administrative sanction of up to \$1,000 for each violation and issue a public reprimand for violations. All civil penalties imposed by the board shall be made payable to the City of Atlanta and deposited in the General Fund.

7.3 Recovering Gratuities. The value of any gratuity transferred or received in violation of the Code of Ethics may be recovered from the entity providing it or the recipient. Any funds recovered shall be deposited in the City of Atlanta General Fund.

7.4 Recommendations. The board may recommend disciplinary actions for violations by employees, including oral admonishment, written reprimand, demotion, suspension with pay, suspension without pay, and dismissal. If the violation involves a company doing business with

the city, the board may recommend to the Department of Procurement that the contractor be suspended, disqualified, or debarred from contracting or subcontracting with the city.

7.5 Right of Review. The decision of the board shall be final. The proceeding shall be subject to review by writ of certiorari to the Fulton County Superior Court.

7.6 Criminal Proceedings. Nothing in these rules is intended to eliminate the right of any person under section 2-803 of the Code of Ethics to institute a proceeding in municipal court.

## **Rule 8. Financial Disclosure**

8.1 Failure to Comply. Any person who fails to file a timely and complete financial disclosure statement without reasonable cause is a delinquent filer under section 2-814 of the Code of Ethics and shall be subject to administrative sanctions for non-compliance.

8.2 Reasonable Cause. Requests for exceptions to the filing requirement based on reasonable cause shall be reviewed on an individual basis and granted by the ethics officer or the Board of Ethics.

8.3 Notice of Non-Compliance. The ethics officer will notify persons who fail to file a timely and complete financial disclosure statement by mailing a notice of non-compliance. This warning letter shall state the way in which the individual has not complied with the law.

8.4 Presumption of Receipt of Notices. All notices shall be sent by regular first class mail to the filer's current address contained in the personnel or board records of the City of Atlanta. There is a presumption that the notice is received by the filer when it is not returned to the Ethics Office as undeliverable.

8.5 Ethics Officer's Report. After the filing deadline has passed, the ethics officer shall present to the Board of Ethics an annual report of all persons required to file a financial disclosure statement under section 2-814. The report shall specify those persons who have complied with the filing requirements, filed a late statement, filed an incomplete statement, failed to file a disclosure statement, or had reasonable cause for failing to comply.

8.6 Fine for Late Filing. Any person who files a statement after the end of the grace period is subject to a fine for filing late. This penalty applies to all city officials, elected or appointed, and city employees who are required to file. The board adopts the following fines for 2015 late filers:

<b>Filing by</b>	<b>Fine</b>
April 16	No fine - grace period
April 17	\$50
April 30	\$100
May 14	\$150
May 28	\$200
On or after June 11	\$250

If a filing date falls on a weekend or holiday, then the deadline is extended to the next regular business day. A decision by the Board to extend the filing deadline or grace period will extend the dates that sanctions are imposed.

8.7 Payment of Fine. Any fine for late filing is due in full at the time of the filing.

8.8 Failure to Pay a Fine. Any person who fails to pay a fine owed for filing after the grace period is subject to an increased penalty for their failure to pay, provided that the maximum penalty for the first offense shall not be more than \$500.

8.9 Failure to File. Any person who fails to file the annual financial disclosure statement is a nonfiler and subject to a maximum penalty of \$500 for the first offense.

8.10 Repeat violators. At the board's discretion, the penalty may be increased up to \$1,000 for second or subsequent violations of the financial disclosure laws.

8.11 Roll of Delinquent Filers. The Ethics Office shall publish a Roll of Delinquent Filers that includes persons who have not complied with the city's disclosure requirements due to their failure to file any statement, filing after the grace period, filing an incomplete statement, or failure to pay the fine for filing late.

8.12 Notice of Delinquency. The ethics officer will notify persons who are found delinquent and listed on the Roll of Delinquent Filers by mailing a notice of delinquency. The notice shall state the way in which the individual has not complied with the law.

8.13 Right to Administrative Review. Any person found delinquent or owing a fine may seek an administrative review before the ethics officer by filing an appeal on a form provided by the Ethics Office. The appeal shall state the reason for the person's failure to comply and the relief sought and must be filed within 30 days of the date of the notice of delinquency. A person must file a disclosure statement before they are entitled to an administrative review.

8.14 Good Cause Required. The ethics officer shall conduct the administrative review based on the written record, unless the respondent requests an administrative hearing. After reviewing the evidence, the ethics officer shall grant relief if the person establishes good cause for his or her failure to comply with the city's financial disclosure requirements.

8.15 Administrative Decision. The ethics officer shall issue a written decision that sets out findings of fact and conclusions of law and give notice of the right to appeal any adverse administrative decision to the Board of Ethics.

8.16 Right to Appeal. Any person who is subject to an adverse administrative decision has a right to appeal the decision to the board within 30 days of the decision on a form provided by the Ethics Office. The appeal must state the facts and issues on which the respondent disagrees with the administrative decision and the reasons that the board should reverse the decision. A person must file a disclosure statement before they are entitled to file an appeal to the board.

8.17 Standard of Review. The Board of Ethics will review the appeal or administrative decision based on the written record. The board may rely on the findings of the ethics officer, which may be disturbed only if the board concludes that the ethics officer acted unreasonably, arbitrarily, or capriciously. The Board of Ethics has the discretion to grant a hearing in connection with any appeal.

8.18 Time Limits on Arguments. All hearings of the board shall be fundamentally fair. Each party may have ten minutes to present his or her arguments and evidence. At the chair's discretion, the board may grant additional time for argument...

8.19 Order of Presentation. The ethics officer shall first outline the case and present any evidence. The person appealing or his or her representative shall respond and present relevant facts and argument. Board members may question any person during the hearing. All testimony shall be under oath.

8.20 Board Decisions. The board shall base its decisions on the preponderance of the evidence standard.

8.21 Penalties. The board may impose any penalty as provided in section 2-807, section 2-814, and Rule 7.4.

8.22 Removal from Office. The board may also recommend to the appointing authority the removal from office of any board member, hearing officer, or NPU officer who is found delinquent for failing to comply with the city's financial disclosure requirements.

8.23 Reporting Sanctions. The ethics officer shall communicate any penalty that the board imposes on any employee to the employee's department head and Commissioner of Human Resources, any penalty imposed on a board member or hearing officer to the appointing authority, and any penalty imposed on a neighborhood planning unit officer to the Commissioner of Planning and Community Development, the NPU coordinator, and the officers of that NPU.

8.24 Final Decision. The decision of the board shall be final. The proceeding shall be subject to review by writ of certiorari to the Fulton County Superior Court.

Adopted January 21, 2010

**City of Atlanta Board of Ethics**

MaryAnne Gaunt, Vice Chair

Charles B. Crawford, Jr.

Cathy Daniels

Caroline Johnson Tanner

Charmaine Ward

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<sup>i</sup> Rule 1 adopted on Jan. 10, 2010; Rules 2 and 3 adopted on Nov. 20, 2003 and amended on Jan. 21, 2010; Rules 4, 5, and 6 adopted on Dec. 18, 2003, and amended on Nov. 15, 2007, and Jan. 21, 2010; Rule 8 adopted on March 24, 2005, and amended on Oct. 27, 2005, Nov. 16, 2006, Nov. 15, 2007, and Jan. 10, 2010.