



Board of Ethics  
**MEETING MINUTES**  
**June 8, 2012**  
City Council Chambers  
9:00 a.m.

Present: Tenley Callaghan, Brenda Robb, Daniel Feltes, Scott Daniels, John Sullivan, Deputy City Clerk Michelle Mulholland and City Solicitor Jim Kennedy.

City Solicitor Jim Kennedy indicated that before the board are revised draft rules which came about from the last meeting due to discussion regarding procedure and standard of review and definitions of some terms. Referencing Article 1-6 of the ordinance, Mr. Kennedy indicated that, in looking at this section and the definitions and activities, they construe improper activities as being 1-6-4, 1-6-5, 1-6-6, and 1-6-7. He stated that there is also a common law definition of improper conduct. He referenced a City of Concord case, *Quimby v. City of Concord*, explaining that improper conduct, as the court says, is what a city official should not do with a failure of something that you should do on the basis of their official position. He noted that looking at this common law definition in the context of the improper activity, as identified in 1-6, is really what the jurisdiction of this board is to look at.

Mr. Feltes asked whether it was Mr. Kennedy's opinion that improper activity is 1-6-4, 1-6-5, 1-6-6, and 1-6-7 and that this case law does not does not apply because it is expressly laid out in the ordinance or that it's both these four items and potentially case law. Mr. Kennedy responded that the case law provides guidance to interpret 1-6-4 through 1-6-7 but that under 30-3-29 (a) that an elected official, as defined within the definitions, is engaged in improper activities and pointed out that those improper activities are expressly laid out in 1-6. He stated that those are the activities that this board has jurisdiction to consider. He added that to the extent they need any interpretation or guidance under those activities as they are defined as improper under the ordinance, they can go to common law and receive some further guidance there.

In regards to apparent conflict, Mr. Kennedy indicated that what they are finding here is that it's an appearance of an actual conflict. He explained that the board has to look at the jurisdiction that it has with the conflict of interest definition, look at it on a case by case basis, and determine whether or not apparent conflict is at issue. He stated that it is not an actual conflict but appears to be some type of conflict in appearance of impropriety. He indicated that this would really have to be determined by the board and the City Council on a case by case basis. He added that the board can make recommendations to the Council with respect to how it interprets apparent conflict.

Mr. Kennedy provided an overview of the revised draft rules submitted to the board.

Mr. Sullivan pointed out that, under the ordinance, the board has subpoena powers and he could foresee a case in which they may want to exercise those to order someone to come to a hearing if they are a key

figure. He inquired whether this subpoena power should be incorporated within the rules. Mr. Kennedy replied that he recommends that it remain within the ordinance.

Referencing D(6)(a) of the draft rules, Mr. Feltes indicated that it does look like a motion to dismiss type of standard in i, ii and iii and feels that iv is a big “catch all”. Ms. Callaghan noted that she feels that it’s wise to keep stating that at times, for political reason for example, they need to have that reason to dismiss something. Mr. Feltes questioned whether this would fall under iii. Ms. Callaghan responded that it could but she doesn’t feel that having a broad ability under iv is a bad thing.

Referencing the public hearing process, Ms. Robb questioned whether anyone can weigh in on an issue even if they are not directly involved. Mr. Kennedy responded that the Chairperson would oversee the meeting with the board by motions of the board. He explained that it’s laid out as to who the persons are that have the right to testify and the people that are involved with the proceedings may call witnesses on their behalf. To the extent that the board finds it appropriate, the board has the option to hear from others to testify.

Referencing 7 (c) and (d), Mr. Feltes stated that it reads that the accused officer or his or her counsel may present a response and may ask questions and inquired whether the claimant can ask questions of the accused officer and whether or not they can also have counsel. He questioned whether this should be added to the rules. Mr. Kennedy noted that 7 (a) should include counsel.

Mr. Kennedy responded to questions in regards to the process of receiving a complaint.

Mr. Sullivan noted that it may be a good idea to send out a note to the accused and give them 20 to 30 days to respond. Members agreed that if the accused is given 20 days to respond, a hearing could still be scheduled within 45 days. In regards to 7 (c) and (d), Mr. Sullivan agreed that there should be parallel treatment for both sides.

After brief discussion in regards to questioning, Mr. Feltes stated that he didn’t know whether or not one would have the right to cross examination of an adverse witness in this type of forum. He indicated that he feels that there could be a liberty interest at stake when making an ethics conclusion that affects somebody’s reputation. He noted that this could have a significant impact on someone’s life and that the board could use their authority to preserve order in the proceedings and to exclude irrelevant testimony.

Mr. Sullivan moved to insert, under 7(a), the language “or his or her counsel”. The motion was duly seconded and passed with no dissenting votes.

Mr. Sullivan moved to insert, under 7(e), “the board, the complainant the complainant’s counsel may ask questions”. The motion was duly seconded.

Ms. Callaghan questioned whether it would make sense to require, five days in advance of a hearing, that a list be submitted of the witnesses that are anticipated.

Mr. Sullivan noted his agreement indicating that this could be done as part of the notice that goes out with the public hearing; stating the public hearing date, that a witness list and any documents that are being prepared be provided by a certain date. Mr. Kennedy indicated that, on a case by case basis, the board can create these procedural rules.

Mr. Daniels referenced the responsibilities of the Chairperson and indicated that the board wants people to be able to work through an issue and to present it. He noted that if it becomes a political or litigation forum, that's a heavy burden for this board to handle. Mr. Feltes noted his agreement and questioned whether he was comfortable with the power of the Chairperson in f and with g. Mr. Daniels responded that he was and that the Chairperson has a significant responsibility.

Mr. Kennedy indicated that the Chairperson is ultimately the voice of the board but each member has due responsibilities to make motions to the Chair at any point during a hearing.

The motion to amend 7(e) passed with no dissenting votes.

Referencing 6 (c) in the draft rules, Mr. Kennedy suggested inserting "or offer a response" after the word testify.

Discussion occurred in regards to the scope of a complaint, the notice and hearing timeline and the ability to have someone clarify their complaint or response.

Mr. Kennedy clarified procedure; at the first meeting the board would review the complaint in which the board may be able to schedule a public hearing on the face of the complaint and not need any testimony; the board may look at it, review it and realize that there is nothing in the complaint that addresses 1-6 in the ordinance and dismiss it; the board may look at it and not know what it means at which point the board would continue the meeting and offer, through notice, the complainant the opportunity to speak to the complaint at a subsequent meeting.

Ms. Callaghan moved to insert "or offer a response or communication" after the word testify in 6 (c). The motion was duly seconded and passed with no dissent.

Mr. Sullivan indicated that there is a clear and convincing standard now and questioned whether this is something that is seen in other ethic boards. Mr. Kennedy responded that they saw it in other ethic boards and thought for this type of a review in which they are talking about reputations, they want that type of standard.

Ms. Callaghan moved to approve the adoption of the rules, as amended. The motion was duly seconded and passed with no dissenting votes.

Ms. Callaghan moved approval of the June 4, 2012 meeting minutes. The motion was duly seconded and passed with no dissenting votes.

Mr. Feltes questioned when the Council would be voting on these rules. Mr. Kennedy indicated that the rules would be presented to the Council on Monday, June 11, 2012.

Mr. Sullivan asked whether the board, assuming the rules are approved, can make a request of the Clerk to send a 20 day notice out to speed up the process so that they next time they meet they could have copies of the complaints with some answers. He questioned whether this automatically happens.

Mr. Kennedy indicated that once the board has rules, they have jurisdiction to review a complaint.

Mr. Sullivan noted the board didn't create a 20 day rule and feels that directing the City Clerk and Legal Department to implement that procedure, if the rules are adopted, seems like a good idea.

Ms. Callaghan asked if the board was going to meet to send the 20 day notice or whether it was going to become automatic. She questioned whether it needed to be added within the rules.

Ms. Callaghan made a motion to reopen the rules. The motion was duly seconded and passed with no dissenting votes.

After brief discussion as to where to place the notice and the wording, Ms. Callaghan moved to amend Article III, A and add additional wording that "upon receipt of a complaint, the Clerk shall immediately provide notice to the accused identified in the complaint and offer the accused the opportunity to respond in writing to the complaint which shall be returned to the Clerk within 20 days of said notice being issued". The motion to amend was duly seconded and passed with no dissenting votes.

Ms. Callaghan moved to submit the adopted rules to the City Council. The motion was duly seconded and passed with no dissenting votes.

The time being 10:05 a.m., Ms. Callaghan moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

*A true copy; I attest:*

*Michelle Mulholland  
Deputy City Clerk*