

Knox County Ethics Committee Rules of Procedure

PREAMBLE: These rules are promulgated to assure fundamental fairness in all proceedings involving allegations of a violation of the Knox County Code of Ethics. Knox County and its duly elected Commission have a strong governmental interest in the enforcement of its Code of Ethics in assuring that all governmental functions are executed in an open, public and ethical manner. These Rules of Procedure also recognize that allegations of, and potential findings of ethical violations of an individual may adversely impact the reputation and good name of an individual. The United States Supreme Court has held that the reputation and good name of an individual is a constitutional guarantee. An individual, therefore is guaranteed a due process right when accused of an ethical violation in a governmental forum. These Rules of Procedure therefore are devised to protect the interests of the County and those of an accused.

Rule 1. Purpose and Construction:¹

These Rules of Procedure are intended to provide for the just determination of every Ethics Committee proceeding. They shall be construed to secure:

- (a) simplicity in procedure;
- (b) fairness in administration; and
- (c) the elimination of:
 - (1) unjustifiable expense and delay; and
 - (2) unnecessary claims against an individual.

Rule 2. Commencement of Proceedings

- (a) All proceedings before the Ethics Committee shall be commenced by the Complainant filing a sworn complaint, under penalty of perjury, with the Knox County Law Director. The complaint shall be on forms provided by the Knox County Law Director's Office.
- (b) The complaint must name the person accused and must allege, with particularity, facts which the Complainant asserts constitute a violation of the Code of Ethics.
- (c) All conduct or activities alleged in the complaint to constitute a violation of the Code of Ethics must have occurred within one (1) year of the filing of the complaint; provided, however, that this limitation applies to conduct and activities that were known, or should have been known, to the Complainant. Further, this one-year limitation is tolled during any time when a complaint must be re-filed and/or when proceedings are not permitted during the pendency of judicial proceedings pursuant to Rule 3.
- (d) The Law Director shall conduct a review of the complaint within 10 days to determine if it is signed under oath and if it asserts a violation of the Code of Ethics. In so analyzing, the standard shall be whether the facts in the complaint, if proven to be true, would constitute a violation of the Code of Ethics. In addition, the Law Director may review the complaint to determine whether the Complainant is able to support the allegations with evidence admissible pursuant to Rule 5(f)(1) and 5(f)(2) of these Rules.
- (e) If the Law Director determines that the complaint does not meet the above referenced standards, the Law Director shall inform the Complainant, in writing, of the defects in the complaint and allow the Complainant reasonable time to remedy the itemized defects.

¹ Based upon Rule 2, Tennessee Rules of Criminal Procedure

- (f) If defects are not cured, the complaint will not proceed any further and the Complainant and the Ethics Committee will be informed.
- (g) If the complaint meets the requirements herein stated, and if there are no pending judicial proceedings as set out in Rule 3, the Law Director shall forward the complaint to the Chair of the Ethics Committee for further processing.

Rule 3: Pending Judicial Proceedings

- (a) Upon receiving a complaint, the Law Director shall search local court dockets to determine:
 - (1) If the Complainant is a party to any criminal or civil actions relating to the subject matter of the complaint;
 - (2) If the Respondent (accused party) is party to any criminal or civil actions relating to the subject matter of the complaint;
 - (3) If the Respondent is witness or potential witness in any criminal or civil actions; or
 - (4) If there are any allegations of violations of criminal statutes.
- (b) If the inquiry reveals any of the items referenced in (a)(1), (2), and/or (3) of this rule, then, in order to preserve the integrity of the judicial process, there shall be no further action on the complaint. The Law Director shall notify the Complainant and the Ethics Committee Chair of such and advise the Complainant that after final determination in the above matters, he/she may re-file the complaint.
- (c) If the complaint makes any allegations of violations of criminal statutes, then there shall be no further proceedings and the Law Director shall forward the allegations to the District Attorney General.
- (d) If during the pendency of the proceedings, the Complainant becomes a part to either a civil or criminal proceeding involving the same subject matter, then there shall be no further action by the Ethics Committee until after a final determination by a judicial tribunal.

Rule 4: Preliminary Proceedings before the Ethics Committee

These Rules of Procedure are to assure due process rights for a Respondent and at the same time provide for full and open proceedings to fulfill Knox County's interest in the enforcement of its Code of Ethics.

- (a) Upon receipt of a complaint from the Law Director, the Chair shall submit the complaint to the members of the Ethics Committee.
- (b) The Chair shall notify the Respondent, in writing that a complaint has been filed and shall forward a copy of the complaint to the Respondent.
- (c) The Chair shall publicly notice a meeting of the Ethics Committee for initial determination as to the viability of the complaint.
- (d) The Committee may request to interview the Complainant and/or request additional documents and evidence.
- (e) The Committee may request the Law Director's Office to conduct investigation of the matters alleged in the complaint.
- (f) Upon reviewing the complaint and any additional information the Ethics Committee deems necessary, the Ethics Committee shall make a determination as to whether the allegations, if proved to be true, would constitute a violation of the Knox County Code of Ethics and, if so, the proceedings shall go forward.
- (g) In making such determination, the Code of Ethics is to be strictly construed and any ambiguity shall be construed in favor of the Respondent.

- (h) If the Ethics Committee determines that the complaint is to proceed forward, the Chair shall send a letter to the Respondent advising him/her that the proceedings are going forward. The letter shall advise the Respondent as follows:
 - (1) Advise the Respondent of date, time and place of hearing.
 - (2) Advise the Respondent of his/her Miranda rights.
 - (3) Advise the Respondent that he/she may bring an attorney or representative of his/her choice.
 - (4) Outline the hearing procedures.
 - (5) Advise the Respondent that he/she may bring witnesses/documents to the proceeding.
 - (6) Advise the Respondent that he/she may file an answer to the complaint and submit documents if he/she so chooses.

Rule 5: Quasi-Judicial Proceedings before the Ethics Committee²

- (a) All parties may be represented by counsel.
- (b) Any party seeking scheduling relief, asserting pre-hearing requests or objections, or raising such similar matters prior to a hearing, shall do so in writing or transmitted electronically to the Chair. The Chair may undertake to address and/or resolve any such matters prior to the hearing.
- (c) The Chair may require the parties to produce and disclose exhibits and other evidence, and to submit any objections thereto, prior to the hearing. The Chair may rule on any such objections either prior to the hearing or at such time the evidence is offered.
- (d) The Complainant has the burden of proving that the Respondent has violated the Knox County Code of Ethics.
- (e) All testimony of parties and witnesses shall be taken under oath or affirmation. The Complainant and then the Respondent shall have a right to present evidence personally or by other witnesses, to examine and cross-examine witnesses.
- (f) The Chair may exclude any irrelevant, immaterial, unreliable or unnecessarily repetitive evidence.
 - (1) Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.³
 - (2) Hearsay evidence is inherently unreliable and is not admissible.
- (g) The Complainant shall proceed to present Complainant's evidence through his/her testimony and testimony of his/her witnesses.
- (h) Respondent shall have the right to cross-examine Complainant and Complainant's witnesses.
- (i) Ethics Committee members may ask any questions of any testifying witnesses.
- (j) The Respondent shall then proceed to present evidence through his/her testimony and testimony of his/her witnesses.
- (k) The Complainant shall have the right to cross-examine the Respondent and any of Respondent's witnesses.
- (l) The Complainant may present concluding argument and comments to the Ethics Committee.

² These Rules of proceeding are modeled after *Ethics Committee Process – 8/27/08; Ethics Committee Process – 7/23/09;* Rules of Procedure from other jurisdictions, Tennessee Rules of Civil Procedure, and Tennessee Rules of Criminal Procedure.

³ Tennessee Rules of Evidence, Rule 401.

- (m) The Respondent may present concluding argument and comments to the Ethics Committee.
- (n) If a hearing is to reconvene at a later date, it shall be deemed sufficient to constitute proper notice of that later session, if an announcement is made before adjournment of the previous session of the hearing specifying the time, date and place of that later session.

Rule 6: Ethics Committee Deliberation Procedures

- (a) At the conclusion of the hearing the Ethics Committee may adjourn or go into deliberative session in order to consider all the evidence. All deliberations shall be in open session.
- (b) Ethic Committee members may participate in the decision only if they have heard all testimony and reviewed all evidence submitted for the Ethic Committee’s decision.
- (c) The burden of proof is upon the Complainant who must prove the allegations by “clear and convincing evidence.”
- (d) Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to allegations sought to be established; it is more than a mere preponderance of evidence, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.⁴
- (e) [Deleted pending Code revision.]
- (f) Any ambiguity in the Code of Ethics shall be construed in favor of the Respondent.
- (g) The finding of a violation of the Code of Ethics impacts the Respondent’s constitutional right to his/her good name and reputation. The Ethics Committee is acting as both judge and jury in these proceedings. To that end, the vote to find a violation must be a unanimous vote.⁵
- (h) The vote to find a violation must be made by a minimum of seven (7) of the nine (9) voting members of the Ethics Committee who are present and qualified to vote pursuant to subsection (b) of this Rule.
- (i) If the Ethics Committee unanimously finds that a violation of the Code of Ethics has occurred, it may:⁶
 - (1) Refer the matter to the Law Director for a legal opinion and/or recommendations for action.
 - (2) In the case of an official, refer the matter to the county legislative body for possible public censure if the county legislative body finds such action warranted.
 - (3) In the case of an employee, refer the matter to the official responsible for supervision of the employee for possible disciplinary action if the official finds discipline warranted.
 - (4) In a case involving possible violation of state statutes, refer the matter to the District Attorney General for possible ouster or criminal prosecution.
 - (5) Take no action and dismiss the complaint.

⁴ This is the burden and quantum of proof definition set forth in a prior Ethics Committee procedure dated 8/27/08.

⁵ Unanimous vote of juries is required under the Tennessee Constitution in both criminal and civil proceedings. *Tennessee Constitution*, Article I, Sec. 6. *See also*, Tennessee Pattern Jury Instructions, Civil, *Section 15.17*.

⁶ Provisions of Section 9 of the Knox County Code of Ethics.