

**RULES AND REGULATIONS OF THE
ROOSEVELT COUNTY ETHICS BOARD**

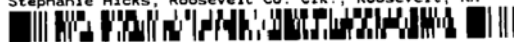
Section 1. Pursuant to the authority granted by the Board of County Commission, the Roosevelt County Ethics Board (hereinafter referred to as the "Board") issues the following Rules and Regulations for its conduct, and for interpretation and enforcement of the 2019-02 Roosevelt County Ethics Ordinance, (hereinafter referred to as the "Ordinance").

In the event that these Rules and Regulations are in conflict with the provisions of the Ordinance, the provisions of the Ordinance shall prevail.

Section 2. COMPLAINT AND HEARING PROCESS

A. Complaints and Violations.

1. A Complaint alleging a violation of the Ordinance shall be made in writing by the filing of a signed and sworn statement attesting to the truth of its contents. The Complaint shall include documentation as to time, place, facts, and the names of any witnesses to the alleged violations alleged to have been committed by the Respondent.
2. The Complaint shall specify the provision or provisions of the Ordinance alleged to have been violated and provide a clear and concise statement of what events took place that the Complainant believes violated the provision or provisions of the Ordinance cited in the Complaint. No Complaint shall be accepted for filing unless it is signed and sworn, and unless the documentation referred to above and the statement of the provision alleged to have been violated or reason/or the Complaint is presented at the same time the Complaint is offered for filing.
3. The Board will not set for hearing any Complaint charging a violation alleged to have occurred more than one (1) year prior to the date of the Complaint.
4. All Complaints shall be filed in accordance with the Ordinance with the County Manager, (unless the County Manager is the Respondent, in such instance the Complaint shall be served upon the County Attorney). After filing the Complaint will be delivered (in person, by email or mail to the address listed in County records) within three (3) business days to each member of the Board and each Respondent.
5. Respondents may file a statement with the Board explaining why the Complaint fails to state a violation of the Ordinance. Respondents who have received an advisory opinion from the County Attorney regarding the issue raised in the Complaint must raise this as a defense to the Complaint at this time. Respondents shall be given ten (10) calendar days, notice of the preliminary hearing. The Respondent's statement shall be filed with the County Manager's Office five (5) calendar days prior to the



preliminary hearing. The County Compliance Office shall provide the Complainants and Board members with the Respondent's statement three (3) County business days prior to the preliminary hearing.

6. The Chair or his/her designee may require upon the timely request of a party that County documents be provided for purposes of a hearing and that County witnesses be made available to testify at the hearing.

B. Preliminary Hearing

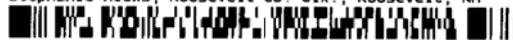
1. Preliminary Hearing Process and Requirements.

- a. After reviewing the Complaint at a preliminary hearing the Board shall issue a preliminary order consistent with these Rules.
- b. A preliminary hearing shall be held by the Board for the purpose of deciding whether to accept a Complaint for further investigation and/or an evidentiary hearing. The Board's decision shall be based on findings that the sworn factual statements made in the Complaint, taken as being true, establish that Respondent has violated the provision or provisions of the Ordinance that are cited in the Complaint.
- c. Complainants and Respondents and their representatives shall, at the request of the Board, address the Board at the preliminary hearing. Such presentations shall be limited to discussion of whether the Complaint contains sufficient factual allegations to support a finding that a violation of the Ordinance occurred. No testimony shall be accepted and no argument about the accuracy of the facts alleged in the Complaint shall be accepted at this hearing. The Board shall also consider the Complaint, Respondents response to the Complaint and any other documentation provided at the request of the Board.
- d. Reasons for Dismissing a Complaint: At a preliminary hearing, the Board may dismiss a Complaint if any one of the following is found or for such other reason as may be determined by the Board.
 - i. The Board has no jurisdiction over the subject matter specified in the Complaint or over the Respondent.
 - ii. The time in which a Complaint could be filed has run.
 - iii. The conduct alleged in the Complaint, even if true, would not constitute a violation of the Ordinance.
 - iv. The Complaint on its face is frivolous, groundless, or brought for the purpose of harassment.

- v. The subject of the Complaint has become moot.
 - vi. The Respondent had obtained an advisory opinion from the County Attorney in writing concerning the identical facts alleged in the Complaint and Respondent complied with the recommendations of such advisory opinion.
- c. Appeal. A Complainant who is aggrieved by the Board's rejection of the Complainant's Complaint may file an appeal to the District Court according to the District Court rules.
- f. The Chair shall promptly set hearing dates and deadlines for any Complaints that is not dismissed.
- g. Persons required to testify before the Board, shall be served with a subpoena issued by the Board and signed by the Chair of the Board or his designee. Complainants and Respondents shall request issuance of subpoenas through the County Attorney's office in a timely manner.
- h. The County Attorney shall provide advice and counsel to the Board but shall refrain from any comment or conduct which may be construed as advocacy for any party.

C. Consent Order/Settlement Process

1. At any time after the filing of the Complaint, the Respondent may offer to settle the Complaint by admitting to the allegations in the Complaint and requesting a settlement conference with the County Manager's Office. Based on the settlement conference, a proposed settlement agreement shall be prepared and submitted to the Board. The settlement agreement shall state the sections of the Ordinance violated, the action taken or to be taken by the Respondent to correct the violation and proposed sanctions, if any, to be imposed upon Respondent.
2. Upon receipt of a proposed settlement agreement, the Board shall meet to determine if it will accept the settlement agreement. Board acceptance of a settlement agreement shall be by a majority vote of those Board members in attendance. Upon acceptance, the Board shall issue a Consent Order that shall be provided to all parties. The review of the settlement agreement and vote on the Consent Order shall be conducted at a public hearing. Testimony shall not be allowed at such hearing nor shall argument of the parties be accepted. The Respondent shall attend the hearing to confirm his acceptance of remedial measures, if any, to be taken by Respondent and sanctions imposed. The Consent Order shall be a final order concluding the case. The settlement agreement approved by the Board and the Consent Order shall be public records. In the event a settlement agreement is rejected by the Board, such settlement agreement (or discussion or other evidence related to it) shall not be used as evidence in any subsequent hearings.



D. Answers.

Answers shall include a Response to each allegation in the Complaint and shall be filed with the County Compliance Office by all Respondents at a date as provided for in the Preliminary Order after the Respondent receives notice that the Board has accepted the Complaint at a preliminary hearing set the matter for a full evidentiary hearing. Each Respondent shall send a copy of his/her Response to each Complainant by first class mail and shall also certify the Response that such mailing occurred on or before the date the Response was filed with the County Compliance Office.

E. Hearings.

In conducting hearings, all parties shall be afforded an opportunity for a full and fair hearing. In this regard, the Board shall follow these procedures:

1. Parties.

The party filing a Complaint with the Board shall be referred to herein as the "Complainant" and the party responding to alleged violations of the Ordinance shall be referred to herein as the "Respondent."

2. Notice.

- a. The Board shall give at least ten (10) calendar days written notice of the hearing to each party stating the time and place of the hearing.
- b. The notice of hearing shall contain a brief description of the matter to be heard so that all participants have an opportunity to prepare for the hearing.
- c. The notice of hearing shall contain deadlines for parties to submit a written statement of issues to be addressed, witness lists, and copies of all documentary evidence to be introduced. A party's failure to make a timely objection to the authenticity of opposing party's exhibits shall result in the admission of those exhibits.

3. Continuances.

Requests for continuances shall be made by parties, in writing, prior to the hearing, and shall be delivered to the Compliance Office to the attention of the Board and the opposing party. The Chair of the Board may grant a continuance for good cause.

4. Evidence.

- a. The Board shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded. It is the policy of the Board that testimony and information presented during the hearing must have a direct and substantial bearing on the case at hand.
- b. The rules of evidence for the conduct of administrative hearings shall apply.

5. Hearing Procedure.

- a. The Chair of the Board shall act as the presiding officer at the hearing unless he/she is unavailable or does not wish to perform this duty in which case the Vice-Chair of the Board shall serve as the presiding officer. In the event neither the Chair nor the Vice-Chair is able to perform this duty the Board members shall select a presiding officer. The presiding officer:
 - i. Shall determine the admissibility of evidence and testimony;
 - ii. Shall make rulings on procedural issues; and
 - iii. Shall be responsible for the Board's written ruling in each case.
 - iv. May issue an administrative subpoena for the appearance of a person at a hearing or for the production of documents, or both.
 - v. May request the County Attorney to apply for a court order compelling compliance with an administrative subpoena or for a Court order requiring the giving of the testimony or production of documents, or to conduct an independent investigation of such matters as the Board deems necessary and before any evidentiary hearing is conducted.
 - vi. May impose reasonable limits on the number of witnesses to be heard and on the nature and length of the testimony or examination of persons appearing at such hearings.
 - vii. May set time limits for presentation of opening and closing statements.
 - viii. May prohibit repetitive testimony.
- b. Should an action of the presiding officer be challenged by another Board member, and should the presiding officer disagree with the challenge, the issue will be decided by a majority vote of the Board members present.
- c. The Board may, but is not required to identify any agreements they jointly have regarding facts and issues established between the parties and eliminate certain facts not in dispute in defining the issues to be heard.



- d. Prior decisions by the Board on the same issue will generally be followed and the parties are urged to refer to prior rulings on identical or similar issues. Prior decisions are available at the County Manager's Office. The County Human Resources Office shall index all Board case decisions by subject and date.
- e. The Board may request clarification by the Complainant of a Complaint prior to any hearing. The Board may request that certain facts be examined initially in order to determine whether such facts exist as will support the allegations to be heard, or make any other rulings that are procedural, limiting, dispositive, or otherwise, which are in accordance with the law as applied to the facts at issue.
- f. Any party may be represented by an attorney.
- g. The Board may dismiss a Complaint after hearing evidence if it finds that the Respondent committed the violation due to an oversight, Respondent has come into compliance voluntarily and the Board determines that no sanction is required or when the Complainant does not appear at a hearing, (but only if the Board determines that it would be unfair to the Respondent not to have the opportunity to examine the Complainant).
- h. In the absence of the Board's decision to proceed in a different manner, notice of which shall be given to the parties at least three (3) days in advance of the hearing, the sequence of the hearing shall be as follows:

- i. Opening Statement of Issues:

- The Complainant and then the Respondent will present statements of issues involved in the case and outline the case that will be presented. Opening statements shall be limited to five (5) minutes per side.

- ii. Complainant's Presentation of their Case:

- The Complainant's case will first be presented to the Board. Witnesses for the Complainant will be called, sworn, and questioned on their involvement in or knowledge of the case. Following each witness's testimony, the Respondent will have the opportunity to question the witness. Board members will then have the opportunity to question the witness on matters related to his/her testimony. Follow-up questioning by the Complainant will be allowed at the discretion of the presiding officer. This procedure will be followed for each of the Complainant's respective witnesses. Complainant shall have one (1) hour to present their case including all witness testimony and submission of exhibits.

iii. Presentation of Respondent's Case:

Respondent's presentation shall follow Complainant's and the same format as the presentation of Complainant's case shall apply. Respondent shall have one (1) hour and fifteen (15) minutes to present their case including all witness testimony and submission of exhibits.

iv. Rebuttal Testimony:

Following presentation of the Respondent's position, the Complainant will be allowed to present rebuttal testimony at the discretion of the presiding officer. Such testimony shall be brief and specifically address the issues brought forth in the Respondent's presentation. No new issues shall be raised. The Complainant shall have fifteen (15) minutes to present any rebuttal testimony.

v. Closing Statements:

At the conclusion of the case presentations and rebuttal testimony, the Complainant and Respondent will each make his/her closing statements. The closing statements should briefly review the issues presented and the desired outcome. The Complainant will then have the opportunity to make a final statement, which shall be limited to issues brought forth in the Respondent's closing statement. Closing statements shall be limited to ten (10) minutes per side.

vi. Deliberations:

Prior to rendering its decision, the Board may enter into a closed executive session to discuss the evidence adduced.

- a) if any hearing is closed for purposes of deliberation, such closure shall be approved by a majority vote of a quorum of the Board taken during the open hearing. The authority for the closure shall be under §10-15(H) of the Open Meetings Act, which shall be stated in the motion for closure and the vote on closure of each individual Board Member shall be recorded in the record. Only deliberations by the Board concerning the evidence and issues brought by or against a person before the Ethics Board in which individual rights, duties or privileges are required by law to be determined by the Board shall be considered by the Board during closed session.

- b) if any decision to hold a closed meeting is made by the Board when it is not in an open meeting or hearing, the closed meeting shall not be held until public notice, appropriate under the circumstances stating the specific provisions of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity to be given to the members and to the general public.
- c) following completion of any closed meeting, the Board minutes/record shall state whether the matters discussed in the closed meeting were limited only to those matters specified in the motion or notice for closure.
- d) except as provided in §10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Commission in an open public meeting.

vii. Decision:

Any decision or opinion of the Board, including findings of fact, which shall consist of a written statement of the facts relied on to support the decision of the Board, shall be given to each party by certified mail or personal service, and shall be filed in the office of the County Compliance Office within 45 days of the completion of the evidentiary hearing.

viii. Record:

The following records of the Board's proceedings shall be kept:

- a. A full record of the hearing by sound recording or by certified court reporter, (which shall be retained for one (1) year after the final decision is issued);
- b. All documents of other items considered and received as evidence; and
- c. Any Decision or Judgment of the Board.

ix. Appeal:

A Complainant who is aggrieved by the Board's rejection of the Complainant's Complaint may file an appeal to the District Court according to the Supreme Court Rule 1-075, NMRA, and §39.3.1.1, NMSA.

Section 4. MISCELLANEOUS

A. Notice.

Any notice required by the Ordinance shall be given by certified mail, personal service or as provided below.

B. Meetings.

The Board shall comply with the provisions of the New Mexico Open Meetings Act relating to notice to the public of its meetings and meetings being open to the public. The length of notice given to the public of the Board's meetings shall be determined by annual resolution.

C. Amendments.

The Board, by majority vote, may amend these Rules and Regulations pursuant and subject to the authority granted under the Ordinance.

D. Quorum

The Board may not act on any matter without a quorum being present. The chair may request an alternate attend in the event a quorum of members does not appear for a meeting or hearing, or may continue the matter to the earliest available time.

E. Majority Vote or Contested Board Issues

In the absence of any controlling authority contained either in the Code of Conduct Ordinance or these Rules, any matter not covered in these Rules shall be controlled pursuant to relaxed rules of parliamentary procedure, and a vote by simple majority of a board quorum shall be detrimental.

F. Mediation of Disputes Between Elected Officials and/or the County Manager and/or Commissioner

Section 7(a) of Ordinance 2019-02 relating to the promotion of Ethical Conduct of Public Officials within Roosevelt County provides that, in the event an Elected Official, the County Manager or the Board of County Commissioners believe that there has been a failure by an Elected Officials to cooperate with one another, or by or with the County Manager, or by or with a County Commissioner, which is detrimental to the efficient operation of the County then in such instance such person may request that a formal mediation be conducted in an attempt to resolve any dispute or disagreement they may have concerning conduct affecting the operation of County Government.

- a) Request for Mediation

A request for mediation may be submitted by an Elected Official, or the County manager, or by the County Commission which shall be addressed to the County Attorney setting forth a brief summary of the issues to be mediated identifying the name and title of the individual with whom mediation is sought. The County Attorney shall advise the County Commission concerning the request for mediation in closed executive session relating to limited personnel.

b) Retention of Professional Mediator

As it is in the best interest of Roosevelt County that Elected Officials cooperate with one another with the County Manager and the County Commission to the greatest extent possible, a professional mediator shall be hired to mediate any disagreement which rises to a sufficient level that is affecting the efficient operation of the County. In such event the County Attorney shall approve the retention of an independent mediator to attempt to resolve the differences between such parties to promote the more efficient operation of County Government.

c) Report by Mediator

The mediator shall enter a written letter advising the County Attorney if the mediation was or was not successful. There shall be no right to appeal from the mediation, and there shall be no retaliation against any person requesting such mediation.

G. Ex Parte Communications.

Parties shall not attempt to contact Board members in the absence of, or without the knowledge of, the opposing party.

II. Effective Date and Filing.

These Rules shall be effective upon filing with the Roosevelt County Clerk. Approved by the Roosevelt County Ethics Board on July 29th, 2019.



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