

CITY OF NAPLES
COMMISSION ON ETHICS AND GOVERNMENTAL INTEGRITY

RULES OF PROCEDURE

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CITY OF NAPLES
COMMISSION ON ETHICS AND GOVERNMENTAL INTEGRITY

RULES OF PROCEDURE

SECTION A. GENERAL RULES

1.1 Purpose and Construction of Rules

(a) These rules are adopted for the following purposes:

- (1) To establish and explain the practice and procedures followed by the Commission on Ethics and Governmental Integrity (hereinafter, "Ethics Commission") and its employees in the performance of their duties under the law; and
- (2) To provide specific guidance necessary to encourage and ensure full compliance with all laws and duties administered and enforced by the Ethics Commission.

(b) These rules should always be construed in a manner consistent with all applicable constitutional and statutory requirements.

1.2 Authority to Adopt Rules

These rules are adopted under the authority granted to the Ethics Commission under the amendment to the Naples Charter, Article 17 and by any other law administered and enforced by the Ethics Commission that establishes the Ethics Commission's authority to adopt rules.

1.3 Jurisdiction

The jurisdiction of the Ethics Commission shall extend to any and all Covered Persons and Lobbyists as those terms are defined in Article 17, Section 17.3. (1)(a) and (b) of the amended City of Naples Charter and any other municipal provision that authorizes the Ethics Commission to exercise its jurisdiction.

1.4 Computation of Time

This section states how to compute a period of time prescribed or allowed by this section, by any order of the Ethics Commission or by any applicable ordinance.

- (a) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would be a Saturday, Sunday, or a legal holiday, the period is extended until the next day that is not a Saturday, Sunday, or legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the offices are closed for a holiday.
- (b) Except where otherwise noted herein, a document may be deemed to be filed or served when it is transmitted electronically via e-mail to the valid e-mail address of its intended recipient or when properly deposited with the United States Postal Service, properly

addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.

- (c) A document filed or served by delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark. A document filed or served by e-mail delivery will be deemed to have been filed according to the time the e-mail was sent.

SECTION B. ADVISORY OPINIONS

2.1 Subject of an Advisory Opinion

- (a) Any Covered Person or Lobbyist may request an informal consultation with the Executive Director regarding application of the Naples Ethics Code to a particular situation as it applies to the covered Person or Lobbyist.
- (b) The Ethics Commission may also opine on whether particular conduct may result in a breach of the public trust or an appearance of impropriety.
- (c) The Ethics Commission will not issue an advisory opinion that concerns the subject matter of pending litigation or a pending Ethics Complaint known to the Ethics Commission.

2.2 Persons Eligible to Receive an Advisory Opinion

A person who is subject to any of the provisions listed in 2.1(a) of this section may request an opinion regarding the interpretation or application of any of the provisions under the Ethics Commission's jurisdiction to himself or herself.

2.3 Request for an Advisory Opinion

- (a) A request for an advisory opinion shall describe an actual and specific factual situation regarding the requestor's prospective conduct. The request must provide sufficient detail to permit the Ethics Commission to provide a response to the request.
- (b) A request for an advisory opinion shall be in writing. A written request may be mailed, hand-delivered, e-mailed, or faxed to the Ethics Commission at the Office of the Executive Director.

2.4 Review and Processing of Advisory Opinions

- (a) Upon receipt of a request for an informal advisory opinion, the Executive Director will determine whether the request concerns a matter under the Ethics Commission's jurisdiction and is made by a person eligible to receive an advisory opinion.
- (b) If there is sufficient precedent on which to base an opinion, the Executive Director will assign an Inquiry (INQ) number and issue an informal advisory opinion without bringing the matter before the Ethics Commission.

(c) If the Executive Director determines that there is insufficient precedent or that the request is of great public importance, a Request for Opinion (RQO) number will be assigned and staff will draft a recommended opinion to present to the Ethics Commission for ratification.

2.5 Time Period

RQO requests shall be considered as soon as possible after staff has completed their recommended opinion. Summaries of all INQs given by Ethics Commission staff shall be presented at the Ethics Commission's regular meetings.

2.6 Publication of Advisory Opinions

Each advisory opinion issued by the Ethics Commission shall be numbered, dated, and published on the Ethics Commission's website.

2.7 Legal Effect

An advisory opinion, until amended or revoked, shall be binding on the Ethics Commission and the requesting party based upon the facts submitted. The opinion may be relied upon by others until amended or revoked.

SECTION C. COMPLAINTS

3.1 Scope of Section

This section applies to formal Complaint proceedings before the Ethics Commission. This section is intended to define the procedure required by the ordinance and shall be construed to ensure the fair and expeditious determination of a formal Complaint.

3.2 Subject Matter of a Complaint

(a) The Ethics Commission may only consider Complaints concerning the City of Naples Ethics Code and any other municipal provisions that authorize the Ethics Commission to exercise its jurisdiction as set forth in the Naples Charter, Article 17.

(b) The Ethics Commission will not consider a Complaint regarding:

(1) An allegation involving a matter outside of the jurisdiction of the Ethics Commission.

(2) An allegation based on facts that occurred more than five (5) years before the date the sworn Complaint is filed. (Art.17 Sec. 17.4.(4) Naples Amended Charter)

(c) Where an employee of the City of Naples is alleged to have violated a provision within the jurisdiction of the Ethics Commission that is based upon the same set of facts that are subject to an ongoing personnel proceeding initiated by the City of Naples, the Ethics Commission may stay consideration of a Complaint until the conclusion of the personnel proceeding.

3.3 Record Keeping and Confidentiality

(a) Confidentiality of the Complaint itself and all staff and Ethics Commission activities, proceedings and documents related to the Complaint shall be confidential pursuant to Florida Statute Section 112.324 (2)(a) until either:

- (1) Confidentiality is waived in writing by the Respondent;
- (2) A determination of Probable Cause is made or ;
- (3) The Ethics Commission orders the Complaint dismissed

Upon the occurrence of any of the actions mentioned in (1)-(3) above, all materials related to the sworn Complaint shall become public records as provided in Chapter 119, Florida Statutes, except to the extent the materials are otherwise exempted from disclosure under the public records law.

(b) For purposes of this rule, the Ethics Commission shall be deemed to have ordered a dismissal of the sworn Complaint, found probable cause, issued a public report, or ordered a public hearing at the time the action is taken by the Ethics Commission.

(c) The confidentiality provided by this rule shall not prohibit the Ethics Commission or the Executive Director from advising the Respondent or the Complainant about the status of the Complaint proceeding.

3.4 Press Inquiries

All press inquiries regarding a Complaint should be referred to the Executive Director. Prior to a finding of probable cause, no probable cause, or a dismissal of the Complaint, the Executive Director is prohibited from confirming or denying the existence of any Complaint regarding any person or department.

3.5 Frivolous or Groundless Complaints

If the Ethics Commission determines a Complainant filed a complaint that was known to be, or should have been known to be, frivolous at the time of filing, the Ethics Commission may order the Complainant to pay reasonable expenses, including attorney's fees and costs, incurred by the Ethics Commission and the Respondent. However, expenses may only be ordered to be paid by the Ethics Commission at a hearing to (i) determine whether the complaint was frivolous and (ii) if determined to be frivolous upon a second hearing to determine the amount of reasonable expenses. Upon the finding of a second frivolous complaint, the Ethics Commission may refuse to accept further complaints from the Complainant involved for up to three years.

SECTION D. PRELIMINARY INVESTIGATIONS

4.1 Staff Procedures upon Receipt of a Complaint

- (a) Upon receipt of a written Complaint, on the appropriate form, staff shall mark on the face thereof the date on which the Complaint was received in the Ethics Commission office. Each Complaint received shall be assigned a Complaint number which shall be entered on the Complaint itself. Any document related to the Complaint shall be entered into the Complaint file. Within five (5) business days of receipt of the Complaint, staff shall send to the Complainant, by e-mail, regular US mail or both, written confirmation of the receipt of the Complaint, the number assigned to the Complaint, and a brief explanation of the Ethics Commission procedures regarding legal sufficiency and probable cause determinations.
- (b) Upon receipt of a Complaint which alleges the elements of a violation within the Ethics Commission's jurisdiction and is executed on the proper Complaint form and based substantially upon the personal knowledge of the Complainant and signed under oath or affirmation by the complaining person, the Ethics Commission shall forward a copy of the Complaint to the Respondent within thirty days (30) of receipt of the Complaint. Any amendments or additional material provided by the Complainant shall also be transmitted to the Respondent.
- (c) Upon the filing of a Complaint filed by the Ethics Commission Advocate or the Executive Director which alleges a violation within the jurisdiction of the Ethics Commission, the Ethics Commission shall forward a copy of the Complaint to the Respondent within five (5) days after filing of the Complaint.

4.2 Determination of Legal Sufficiency and Order of Preliminary Investigation

- (a) After a Complaint has been reviewed and found to be in the proper form, the Complaint shall be reviewed by the Ethics Counsel in order to determine whether the Ethics Commission has jurisdiction over the matter. Complaints need not be as precise as would be required by the Florida Rules of Civil Procedure and shall be deemed sufficient if the Complainant, under oath and based substantially upon personal knowledge, alleges matters which if true would constitute a violation of the Ethics Code.
- (b) Ethics Counsel shall prepare a memorandum regarding the legal sufficiency of all Complaints. If Ethics Counsel finds the Complaint to be legally sufficient, it will be forwarded to the Executive Director for assignment to the Ethics Commission Advocate to investigate and review for a Probable Cause determination. If Ethics Counsel finds the Complaint to be legally insufficient, the recommendation to dismiss the Complaint must be presented to the Ethics Commission. The Ethics Commission shall meet in Closed Session and may find the Complaint to be legally insufficient, dismiss it and notify the Complainant and Respondent in the manner provided in Section 4.12(h)(2) that no investigation will be made or may take such other action as may be appropriate. In any case where a Complaint is found legally insufficient and dismissed, the public report and

order dismissing the Complaint together with the Complaint itself and all documents related thereto shall become a public record.

4.3 Withdrawal of Complaints

After a Complaint has been filed with the Ethics Commission, the Ethics Commission may permit the Complainant to withdraw the Complaint only for good cause shown. Withdrawal shall be requested in writing and signed by the Complainant. "Good Cause" shall be determined based upon the legal sufficiency or insufficiency of the Complaint to allege a violation of an ordinance under the Ethics Commission's jurisdiction, the stage of the disposition of the Complaint arrived at before the request was received, and the reasons given by the Complainant for wishing to withdraw the Complaint. If withdrawal is permitted, the Ethics Commission shall order the Complaint dismissed.

4.4 Stay of Proceedings

The Respondent, the Executive Director, the Advocate, the State Attorney's Office, or the United States Attorney's Office may move for a stay of the proceedings at any time prior to the commencement of a public hearing regarding a matter before the Ethics Commission if the Respondent is the subject of an active criminal investigation or has been charged by information or indictment with charges arising out of the same factual allegations contained in the Complaint.

4.5 Delegation of Authority

The Ethics Commission hereby delegates to its investigators, Executive Director and Advocate the authority to administer oaths and affirmations and authorizes them to serve any subpoena issued under the Ethics Commission's authority.

4.6 Subpoenas during Preliminary Investigation

Upon recommendation of the Executive Director, Ethics Counsel, or the Advocate, the Ethics Commission may authorize the issuance of subpoenas or subpoenas *duces tecum*. Each subpoena shall be signed by the Executive Director, Advocate or other member of staff authorized by the Ethics Commission and shall state the person, documents, or other things to be subpoenaed. Each subpoena shall name the person before whom the witness is to give testimony and shall state in general terms the subject matter of the testimony to be elicited. If documents or other things are to be produced, the subpoena shall describe the same with as much specificity as reasonably practicable. The subpoena shall state clearly on its face that it is issued by the City of Naples Commission on Ethics and Governmental Integrity in accordance with its authority to investigate violations within its jurisdiction. Such subpoenas shall be issued for investigative purposes only, and neither the Complainant, the Respondent, nor their counsel shall be entitled to attend the investigative proceeding at which the witness is to give a sworn statement unless the Complainant or the Respondent is the person subpoenaed. An emergency subpoena may be issued by the Chair who shall notify the Ethics Commission at the next scheduled meeting.

4.7 Commencement of Investigations

- (a) A preliminary investigation shall be undertaken of every legally sufficient Complaint over which the Ethics Commission has jurisdiction to determine whether there is Probable Cause to believe that a violation has occurred.
- (b) Investigations shall be conducted by Ethics Commission staff under the direction of the Advocate or Executive Director.
- (c) Investigations shall be limited to the allegations in the Complaint but shall include an investigation of all facts and persons materially related to the Complaint at issue.

4.8 Wrongful Acts Unrelated to the Complaint

If during the course of an investigation, evidence of a wrongful act not materially related to the Complaint at issue is discovered by an investigator, such evidence shall be reported to the Executive Director or Advocate. Upon receipt of the report containing evidence of a wrongful act not materially related to the Complaint at issue, the Advocate or Executive Director shall either initiate further investigation, file an Ethics Complaint, or forward evidence of any other wrongful act to the appropriate disciplinary or law enforcement official as soon as practicable following the conclusion of the preliminary investigation.

4.9 Conduct of Investigators during Preliminary Investigation

- (a) Investigator Contact with Potential Witnesses and Respondent. The investigator shall inform the person being interviewed of the confidential nature of the investigation and of the Complaint unless the Respondent has waived confidentiality.
- (b) Investigator to be Impartial. An investigator shall be impartial and unbiased in the conduct of the preliminary investigation. An investigator shall collect all evidence materially related to the allegations of the Complaint, whether such evidence tends to prove or disprove the allegations. If an investigator feels that for any reason, he or she cannot be impartial or unbiased during the preliminary investigation, then such investigator shall so notify the Advocate or Executive Director and shall immediately discontinue working the investigation.
- (c) Investigator's Report. Upon completion of the preliminary investigation, the investigator shall prepare a Report for presentation to the Advocate or Executive Director. The Report shall contain a synopsis of all pertinent information obtained through interview of witnesses, documentary evidence, or other sources.

4.10 Investigation of Facts and Parties Materially Related to Complaint

The Ethics Commission has the duty to investigate all facts and parties materially related to the Complaint at issue.

- (a) Facts materially related to the Complaint include facts which tend to show a separate violation of a provision under the Ethics Commission's jurisdiction by the Respondent:
 - (1) Other than as alleged in the Complaint and consisting of separate instances of the same or similar conduct by Respondent as alleged in the Complaint or;
 - (2) Which arise out of or in connection with the allegations in the Complaint.

Where facts materially related to the Complaint are discovered by the investigator during the course of the investigation, the Advocate or Executive Director shall order an investigation of such facts and the investigator shall include such facts in the investigative report. The Advocate or Executive Director may recommend, and the Ethics Commission may order a public hearing as to those violations of an ordinance under its jurisdiction. From that point in the proceedings until final disposition of the Complaint, such facts shall be treated as if they were initially alleged in the Complaint at issue.

(b) A party materially related to the Complaint means

- (1) Any other Covered Person or Lobbyist who has engaged in the same conduct as that alleged against the Respondent in the Complaint at issue; or
- (2) Any other Covered Person or Lobbyist who has participated with the Respondent in the alleged violations as a coconspirator or an aider and abettor.

4.11 Counsel

(a) Respondent. The person accused of the ethics violation shall be the Respondent. Respondent shall be the only party unless consolidation of complaints is granted. Respondent may appear on his own behalf or may be represented by a lawyer. All notices and communications shall be sent to Respondent directly unless Respondent is represented by a lawyer in which case, all notices and communications shall be made through the Respondent's lawyer.

(b) Advocate. The Advocate presenting the matter before the Ethics Commission shall be the lawyer retained or appointed by the Ethics Commission to serve as Advocate. Should the staff Advocate have a conflict of interest, the Ethics Commission may retain special counsel to serve as the Advocate in any matter. The Advocate shall be a full participant in the proceeding and shall present all the evidence relevant to the cause that was produced by the preliminary investigation and such additional evidence as may be obtained through discovery or further investigation.

(c) Complainant. To the limited extent the Complainant is entitled to participate in or observe Ethics Commission proceedings, the Complainant may be represented by a lawyer. All notices and communications to a Complainant represented by counsel shall be made through Complainant's lawyer.

(d) Appearances. Counsel must file a notice of appearance with the Commission.

4.12 Probable Cause Determination

(a) Advocate's recommendation. The Advocate shall review the investigator's report and shall make a written recommendation to the Ethics Commission regarding probable cause.

(b) Probable Cause exists where the facts and circumstances would lead a reasonable person to believe that an ethics violation has occurred.

- (c) The Respondent shall be given not less than ten (10) days from the date of mailing of the Advocate's recommendation to file with the Ethics Commission a written response to the recommendation. The Respondent may also file a motion in opposition to the proceeding (including motions to dismiss, to strike, and for a more definite statement) upon receipt of the Advocate's probable cause recommendation. Respondent's motions must be received by the Advocate no later than 72 hours prior to the scheduled hearing, excluding weekends and holidays.
- (d) Notice of Hearing and Right to Attend - Respondent. The Respondent and his or her counsel shall be permitted to attend the hearing at which the Probable Cause determination is made. Notice of the hearing shall be sent to the Respondent at least ten (10) days before the hearing. This time period may be shortened with the consent of the Respondent, or without the consent of the Respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Ethics Commission so long as reasonable notice under the circumstances is given.
- (e) Notice of Hearing and Right to Attend – Complainant. A Complainant shall be permitted to attend the hearing at which the Probable Cause determination is made. Complainant will not have the right to speak or otherwise participate in the hearing unless called as a witness by the Respondent or the Advocate.
- (f) Scope of Probable Cause Determination. The Respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Ethics Commission, based upon the investigator's report, before the Probable Cause determination. The Chair of the Ethics Commission may impose reasonable time limits on presentations made by the Respondent and Advocate.
- (g) Probable Cause Determination. At the meeting to determine Probable Cause, the Ethics Commission may continue its determination to allow further investigation; may order the issuance of a public report of its investigation if it finds No Probable Cause to believe that a violation of the Ethics Code or any other provisions under its jurisdiction has occurred; or may take such other action as it deems necessary to resolve the Complaint consistent with due process of law. In making its determination, the Ethics Commission may consider:
- (1) the sufficiency of the evidence against the Respondent as contained in the Complaint and the Advocate's Probable Cause determination.
 - (2) any admissions and other stipulations of the Respondent;
 - (3) the nature and circumstances of the Respondent's actions;
 - (4) the expense of further proceedings; and
 - (5) such other factors as it deems material to its decision.

If the Ethics Commission orders a public hearing of the Complaint, the Ethics Commission shall determine what charges shall be at issue for the hearing.

(h) Notice of Final Decision to Complainant and Respondent.

- (1) Upon a finding of Probable Cause by the Ethics Commission, Complainant and Respondent shall be notified of such finding in writing within (5) business days. No written notice need be sent to a Complainant or Respondent who was present at the meeting when the finding of Probable Cause was made.
- (2) Upon a finding of No Probable Cause or No Legal Sufficiency, Ethics Commission staff shall draft a Final Order pertaining to that complaint. The Final Order shall be signed by the Chair of the Ethics Commission (or his or her designee) no later than the next scheduled meeting of the Ethics Commission. Within ten (10) business days of the Final Order being signed by the Chair (or his or her designee) a copy shall be filed with the Executive Director, and a copy shall be sent to the Complainant and the Respondent by U.S. Mail or e-mail.

4.13 Notification of Public Hearing

Upon the Ethics Commission's ordering a public hearing of a Complaint, the Ethics Commission staff shall so notify the Complainant and the Respondent in writing by U.S. Mail or e-mail within (5) business days.

4.14 Disposition of Matter

Notwithstanding any other provision herein, the Ethics Commission may at its discretion (i) dismiss any Complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (ii) dismiss any Complaint at any stage of disposition and issue a letter of advice to the Respondent or any other appropriate person where it appears that the violation was inadvertent, unintentional or insubstantial.

4.15 Request for Public Hearing

Upon request submitted to the Ethics Commission in writing, any person whom the Ethics Commission has found Probable Cause to believe has committed a violation of a provision within its jurisdiction, shall be entitled to a Public Hearing.

4.16 Default

If a Respondent or their representative fails to appear at the Public Hearing, the Ethics Commission may find the Respondent in default and issue an appropriate final order.

SECTION E. PUBLIC HEARINGS

5.1 Public Hearings

Public Hearings may be conducted by the Ethics Commission. Proceedings before the Commission shall be governed by all applicable provisions of the Florida Rules of Civil Procedure except where otherwise designated herein. If the hearing is conducted by a single member, he or she shall prepare a report and submit it to the Ethics Commission for ratification.

5.2 Parties to Public Hearing

The person accused of a violation of an ordinance under the Ethics Commission's jurisdiction shall be the only party unless consolidation is granted. The Advocate shall be a full participant in the proceedings and shall present all the evidence relevant to the issue that was discovered during the preliminary investigation and such additional evidence as may be obtained through discovery or further investigation.

5.3 Standard of Proof

The standard of proof is clear and convincing evidence – proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt.

5.4 Consolidation of Cases

The Ethics Commission may consolidate cases if there are matters which involve identical parties or arise out of related issues of law and fact and if it appears that consolidation would promote the expeditious resolution of the matters and would not unduly prejudice the rights of a party.

5.5 Disqualification of Ethics Commissioners

Refer to Subsection Article VIII (A) and (B) of the Ethics Commission Bylaws.

5.6 Ex-Parte Communications

Refer to Article IV (A)(2) of the Ethics Commission Bylaws.

5.7 Subpoenas for Discovery

At any time after the Ethics Commission makes a finding of probable cause on a written, sworn complaint, the Ethics Commission may issue subpoenas to effect discovery upon the written request of Respondent or Advocate. The requesting party shall give the name and address of each witness he or she wishes to have deposed and shall describe with particularity those documents or other items that the person wishes to have the witness produce, bring or deliver pursuant to a subpoena *duces tecum*. Parties may also obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. The Chair, or a member of the Ethics Commission designated by the Chair, may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

5.8 Subpoenas for Public Hearing

The Respondent and the Advocate shall submit to the Executive Director a list of all witnesses he or she wishes to have subpoenaed to attend the hearing and the Executive Director will provide the witness lists to the Ethics Commission. The lists shall include the correct names and addresses of the witnesses and shall describe with particularity those documents or

other items that he or she wishes to have the witness bring to the hearing pursuant to subpoena *duces tecum*. Subpoenas shall be issued as provided herein.

5.9 Motions

- (a) All motions shall be in writing unless made on the record during a hearing and shall fully state the actions requested and the grounds relied upon. The motion shall include a statement that the movant has conferred with the Advocate and all other parties of record and shall state whether there is any objection to the motion.
- (b) The original written motion shall be filed with the Executive Director and a copy served on all parties or their attorneys. Ethics Commission staff shall send a copy of the motion to the Ethics Commission.
- (c) Unless the motion is in opposition to the proceeding, the Chair, or a member of the Ethics Commission designated by the Chair, shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motions, but it is not required to hold a hearing on a motion in order to rule upon it.
- (d) Every written motion may be accompanied by, or included in, a written memorandum stating the grounds upon which the motion is based. Other parties to a proceeding may, within ten (10) days of service of a written motion, file written memoranda in opposition.

5.10 Motions in Opposition to a Proceeding

Motions in opposition to a proceeding, including motions to dismiss, to strike, and for a more definite statement, may be filed at any time after the Advocate submits his or her probable cause memorandum and must be filed no later than ten days (10) prior to a scheduled public hearing. Unless waived by the parties, the Ethics Commission shall hold a hearing and rule on the motion.

5.11 Motions to Dismiss Filed by Advocate

After Probable Cause is found and a Public Hearing is ordered by the Ethics Commission and after further investigation or discovery is made by the Advocate or Executive Director, the Advocate or Executive Director may move to dismiss the proceeding if they conclude that there is insufficient evidence to proceed to public hearing in good faith. Such a motion shall specifically state the grounds upon which it is made.

5.12 Prehearing Conferences

The Chair, or a member of the Ethics Commission designated by the Chair, may conduct one or more prehearing conferences for the purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing the possibilities of settlement of the issues, examining exhibits and documents, exchanging names and addresses of witnesses, and resolving other procedural issues.

5.13 Exchange of Witness Lists

Unless otherwise ordered by the Chair, or a member of the Ethics Commission designated by the Chair as a result of a prehearing conference, the Advocate and the Respondent(s) or counsel for Respondent(s) shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing with a copy being provided to the Chair. Names and addresses of witnesses discovered subsequently shall be disclosed to the other party or parties and to the Chair as soon as possible. Failure to disclose the name and address of a witness may result in the exclusion of the witness's testimony, according to the rule applied in civil judicial proceedings.

5.14 Settlement

- (a) The Ethics Commission may enter into a settlement agreement at any stage of the proceedings if it finds it to be just and in the best interest of the citizens of the City of Naples.
- (b) The Advocate or Executive Director may enter into settlement negotiations but must present all settlement proposals to the Ethics Commission for consideration and approval.

SECTION F. ORDER OF PUBLIC HEARING

6.1 Presentation of the Case

The Advocate shall present his or her case first. The Respondent may then present his or her case. Rebuttal evidence may be permitted at the discretion of the Ethics Commission.

6.2 Opening and Closing Statements

Opening and Closing Statements may be presented by the Advocate and the Respondent. The Advocate may make the first statement and the Respondent may follow. Rebuttal by the Advocate may be permitted or may be denied. The Chair of the Ethics Commission may impose reasonable time limits on the opening and closing statements made by each party.

6.3 Evidence

- (a) Stipulations may be received and are encouraged as to uncontested matters.
- (b) Oral evidence shall be taken only on oath or affirmation.
- (c) The Respondent and the Advocate shall have the right to present evidence relevant to the issue; to cross-examine opposing witnesses on any matter relevant to the issue; and to impeach any witness regardless of who first called him or her to testify.
- (d) The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement or explain other evidence but shall not be sufficient in and of itself to support

a finding. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The Ethics Commission shall not allow the introduction into evidence of an affidavit of a person when that person can be called to testify; this shall not preclude the admission of a deposition of such person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.

6.4 Transcript of proceedings

The proceedings shall be recorded by recording instruments or by a court reporter. The recording of the proceeding is public record. Respondent may at his or her own expense provide a court reporter or recording instruments. The Ethics Commission may provide a court reporter at its discretion. No transcript of the proceedings shall be prepared unless requested by the Ethics Commission or the Respondent. If the Respondent requests that a transcript be prepared by a court reporter, the Respondent shall pay the expense of transcription. If the Respondent requests that the Ethics Commission prepare a transcript from recording instruments and the Ethics Commission grants such request, the Respondent shall pay the Ethics Commission the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript.

6.5 Proposed Public Report of Decisions

After the conclusion of the hearing, the Respondent and the Advocate may present written proposed Final Orders, within a time designated by the Chair or a member of the Ethics Commission designated by the Chair.

SECTION G. APPEALS

7.1 Appeal of Final Order or Advisory Opinion

Any final order where the Ethics Commission finds that a violation has been committed or any advisory opinion issued by the Ethics Commission shall be subject to review in accordance with the Florida Rules of Appellate Procedure. The Ethics Commission shall provide the index and record on appeal when required by and in accordance with the Florida Rules of Appellate Procedure.

7.2 Fees

A fee may be charged by the Ethics Commission for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such fee may be waived by the Ethics Commission if the party requesting the record is indigent. Costs or fees may not be assessed against the Ethics Commission in any appeal from a final order or advisory opinion issued by the Ethics Commission.

7.3 Stay

Unless specifically ordered by the Ethics Commission or by a court of competent jurisdiction, the commencement of an appeal does not suspend or stay a final order or an advisory opinion of the Ethics Commission. The final order or advisory opinion shall remain in effect during the appeals process.

SECTION H. PENALTIES

8.1 Imposing of Penalties

Penalties may be imposed by the Ethics Commission after a settlement agreement has been entered into between the Commission and the Respondent or after a public hearing where the Ethics Commission has found violations of the Ethics Code have occurred.

8.2 Types of Penalties

The Ethics Commission may impose the following penalties:

- (a) A willful and corrupt violation of the Ethics Code subjects the violator to the criminal penalties set out in the ordinances of the City. Additionally, any Covered Person who willfully and corruptly violates this Ethics Code shall be guilty of malfeasance in office or position and the Ethics Commission may recommend removal of such person from office or position.
- (b) In addition to any other penalty, violation of this Ethics Code with the knowledge, express or implied, of the Person contracting with, making a sale to or purchase from the City, may render the contract, sale or purchase voidable by the City Council.
- (c) A finding of a violation of this Ethics Code by the Ethics Commission may include any of the following actions or penalties:
 - (i) A letter of advice which may include a requirement for training in state and local ethics;
 - (ii) A letter of reprimand which may include a requirement for training in state and local ethics;
 - (iii) Referral to an appropriate agency, including but not limited to law enforcement;
 - (iv) A fine of up to five hundred dollars (\$500.00) per violation, to be deposited in the City's General Fund;
 - (v) For an employee, discipline as determined by the City Manager up to and including discharge;
 - (vi) For any member of City Council, the City Manager, the City Clerk, the City Attorney, the City Physician or any appointed member of a department, board, agency, or commission covered by the Ethics Code, referral to City Council;

(vii) When the Ethics Commission determines that the Person or entity has received a pecuniary benefit as a result of a violation of the Ethics Code, referral to City Council for consideration of restitution of the amount of the pecuniary benefit, to be deposited in the City's General Fund.

9.1 Enforcement Proceedings

- (a) The Ethics Commission and the Respondent may enter into a payment plan for the amount contained in the final order.
- (b) The Ethics Commission may make application to any circuit court which shall have jurisdiction to order the violator to comply with the order. Any violator who fails to obey the order may be punished by the court.
- (c) If the Respondent is a Covered Person under the Ethics Commission's jurisdiction, the Ethics Commission may order the appropriate City of Naples official to garnish the Respondent's wages to pay the amount of fines or restitution owed.
