

DeKalb County
Rules of the Board of Ethics¹

Rule 1. Jurisdiction

1.1 Ethics Jurisdiction. The Board of Ethics has jurisdiction to consider matters that are raised in connection with Section 22A of HB597, 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 as to whether a particular course of conduct would constitute a violation of the standards imposed in this section or other applicable ethical standards. The request must be in writing and come from an official or employee 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 ninety 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.

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 Chief Executive and members of the Board of Commissioners and posted on the Board of Ethics website.

¹ The Rules of Procedure for the Board of Ethics were initially adopted on February 9, 1993 and subsequently amended on March 7, 2014, March 31, 2014 and June 24, 2014. The Rules were revised and adopted in their entirety on January 26, 2016 and subsequently revised on September 28, 2017 and May of 20, 2021.

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.

Rule 3. Informal Advice

3.1 Verbal or Written Request. The Ethics Code gives the ethics officer the duty to advise all county 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 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 administrator.

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 administrator 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.

4.4.1 Receipt of Complaints. The Ethics administrator shall forward any written complaint received to the Board of Ethics and the ethics officer shall conduct a preliminary investigation pursuant to Section 4.5.

4.5 Review for Jurisdiction. The ethics officer shall determine within five business days of receipt of a complaint whether an ethics complaint alleges a violation of the DeKalb County's Code of Ethics and whether the complaint meets the jurisdictional requirements of the Code of Ethics. If the ethics officer determines that the ethics complaint does not contain the necessary information under rule 4.2 or 4.3 or that the ethics complaint does not meet the jurisdictional requirements of the Ethics Code, the ethics officer shall advise the Board of Ethics of his or her findings. The Board of Ethics shall then determine whether it agrees with the findings of the ethics officer. If the Board of Ethics agrees with the findings of the ethics officer, the Board of Ethics shall direct the ethics officer to notify the complainant of the defect and the need to correct it before the complaint will be considered. The complainant shall have ten business days from the date of notice to correct and refile the complaint directly with the ethics administrator. If the complainant fails to refile and correct the complaint within 10 days, the complaint shall be dismissed by the Board of Ethics within 30 days of receipt of the original complaint unless extended by a majority vote of the Board of Ethics. Likewise, 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 recommend dismissal of the complaint and notify the complainant and respondent prior to seeking formal board action on the recommendation. Nothing shall preclude the ethics officer from communicating with the complainant prior to the time the matter is submitted to the Board of Ethics.

4.6 Notice to Respondents. The ethics administrator shall send written notice within one business day to the respondent against whom the complaint was filed. A copy of the complaint and any supporting documents or items submitted with the complaint, if feasible, shall accompany the notice; otherwise, copies of the supporting attachments shall be made available to the respondent as soon as practicable. Nothing provided herein shall preclude the ethics officer from permitting the respondent to inspect such documents or items at a mutually convenient time.

4.7 Response to Allegations. The respondent shall file a written response to the complaint within thirty days of its receipt; provided that nothing shall preclude the ethics officer from agreeing to an extension of time upon request of the respondent.

4.8 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.

5.2.1 Conflict(s) of Interest. In the event a complaint alleges that one or more members of the board, the ethics officer, or an employee supervised by the ethics officer violated the Code of Ethics, the board, in its discretion, may appoint an attorney who is independent and without conflict of interest to conduct an investigation of the complaint; or an independent hearing officer pursuant to Rule 6.2. Such appointed person(s) shall have all of the designated authority as may be prescribed by the board.

5.2.2 Intention of Rules. Rule 5.2.1 and rules pertaining thereto are intended to provide for the transparent and independent consideration of complaints which pose a conflict of interest. The provisions set forth in Rule 5.2.1 are to be construed liberally to effectuate the purposes of these rules, the policies of the board and the Code of Ethics.

5.3 Referral to Other Agencies. If another county 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 county, state, or federal law enforcement agencies.

5.4 Dismissal of Complaint. The ethics officer may recommend dismissal of 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.

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. At the written request of the Ethics Officer, the Chairman is authorized to execute subpoenas on behalf of the board. If for any reason the Chairman is unavailable, the Vice-Chairman shall be authorized to execute subpoenas on behalf of the board. Following execution, the Ethics Officer shall be authorized to issue the subpoena for the purpose(s) specified therein. The Ethics Administrator shall (1) maintain records of all requests made by the Ethics Officer and subpoenas executed by the Chairman or Vice-Chairman pursuant to this section and (2) transmit copies of the same to the full board. Nothing herein shall be construed as precluding the full board from authorizing the issuance of subpoenas in connection with an investigation or hearing before the board.

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 ethics 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 County's Code of Ethics.

5.7 Notice to Respondent. The ethics officer shall send a copy of the probable cause report to the respondent and give notice of a hearing date. A response stating the facts and issues on which the respondent disagrees with the report, shall be due no later than ten (10) days prior to the date of the probable cause hearing.

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 Hearing Officer. The board may contract for the services of a hearing officer, who shall have the power to:

- (a) exercise general supervision over assigned ethics matters, including jurisdictional questions;

- (b) grant continuances;
- (c) sign subpoenas;
- (d) preside over evidentiary hearings and decide questions of law and fact raised during such hearings;
- (e) prepare reports and/or make recommendations as requested by the board; and (f) render final decisions.

6.3 Pretrial Conference. At the request of the respondent, a pretrial conference may be held between the ethics officer and respondent to identify the disputed facts and issues for the board to decide.

6.4 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. Nothing shall preclude the respondent, at its expense, from hiring a court reporter to take down the proceedings.

6.5 Board's Legal Counsel. The board may request that the Solicitor of DeKalb County or any attorney representing the office of the Solicitor of DeKalb County advise the board. In the event of a conflict with the Solicitor's office, the board may select another attorney by majority vote to provide services to the board.

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

6.7 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 liberally follow the rules of evidence of the State of Georgia.

6.8 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.

6.9 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.

6.10 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.

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

6.12 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 shall enter a written order and impose any penalties provided by the Code of Ethics.

7.2 Penalties. Any intentional violation of this section, furnishing of false or misleading information to the Board of Ethics or the ethics officer, failure to follow an opinion rendered by the Board of Ethics, or failure to comply with a subpoena issued by the Board of Ethics pursuant to this section shall subject the violator to any one or more of the following:

- (a) Administrative sanction of not more than \$1,000.00 assessed by the Board of Ethics;
- (b) Public reprimand by the Board of Ethics; and
- (c) Referral for prosecution by the DeKalb County Solicitor and, upon conviction, a fine of up to \$1,000.00 per violation and up to six months imprisonment, whether the official or employee is elected or appointed, paid or unpaid. An action for violation of this section, the furnishing of false or misleading information, or the failure to comply with a subpoena issued by the Board of Ethics must be brought within two years after the violation is discovered.

7.3 Limitation. A complaint for violation of the Code of Ethics, the furnishing of false or misleading information, or the failure to comply with a subpoena issued by the Board of Ethics must be brought within four years after the violation is discovered.

7.4 Recommendations. If the violation of the Code of Ethics involves a company doing business with the county, the board may recommend to the Chief Executive and the Commission that the contractor be suspended, disqualified, or debarred from contracting or subcontracting with the county.

7.5 Right of Review. The decision of the board shall be final. Such decision shall be subject to review by writ of certiorari to the DeKalb County Superior Court. A final decision rendered pursuant to Rule 6.2 shall be subject to appeal in the same manner as a final decision of the board.

Rule 8. Alternate Board Members

8.1 Lack of Quorum. Alternate board members shall only serve with all the rights and obligations of full board members under the following circumstances which cause the Ethics Board to lack a quorum: 1) Members of the Board are absent during a public meeting of the Board; 2)

Members have a conflict of interest which prevents them from participating in a particular matter; 3) Recusal of a board member from participating for any reason; 4) Vacancy of a position on the Ethics Board.

8.2 Temporary Appointment of Alternate Board Member. When a lack of quorum exists on the Ethics Board due to the circumstances described in Rule 8.1 above, the Chair of the Board shall appoint an alternate to participate.

8.3 Participation by Alternate Board Member. If an alternate is participating in a meeting due to lack of a quorum, the alternate may participate as a full member with respect to all business taking place during that particular meeting. If an alternate is asked to participate in a particular matter due to a conflict of interest and/or recusal of another board member, the alternate shall only participate in the business involving the matter in which the recusal or conflict exists.

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DeKalb County Board of Ethics