

## **Non-Hearing Case Closure Reg.**

### **Summary of Proposal:**

This regulation's purpose is to distinguish when compliance matters are appropriately resolved through warnings and referrals, and to direct staff on related aspects of confidentiality.

### **Applicable Law:**

The Code at [Section 197.12\(a\)\(4\)](#) states:

“If, in exercising its discretion, [the probable cause panel] determines that the nature of the violation is minor, then it will dismiss the complaint with notice to the complainant and the subject.”

The Code is silent on criteria for determining minor violations; additionally, the type of notice that can or should be provided to either party is unspecified.

### **Text of Proposal:**

(A.) “In determining whether a case is appropriate for hearing, the probable cause panel (“panel”) shall consider, but not be limited to, the following criteria:

- (i) whether the panel would still be upholding the spirit of the Code of Conduct;
- (ii) whether a reasonable person familiar with all the facts would consider the violation technical and not substantive in nature and extent;
- (iii) whether the conduct is part of a pattern;
- (iv) whether the subject has already received a letter of warning, admonition, or has contravened advice issued by this agency or the State Ethics Commission; and
- (v) whether mitigating compelling reasons exist, including but not limited to factors such as if the matter is moot and incapable of repetition.

(B) If the panel determines that a matter is not appropriate for hearing, the panel shall direct staff to follow their directive as to one of the following options:

- (i) issue a letter of warning or private admonition for the first such violation to the person whose conduct is described in the request; and/or
- (ii) refer the matter to the Office of Municipal Investigations, to the State Ethics Commission, or other jurisdictional entity; this referral shall copy immediate management as well as the highest levels of leadership in the employee's branch of government (i.e., Director and Mayor/Council leadership/Controller).

(C) Confidentiality:

- (i) A warning or admonition letter shall be private and subject to the Board's rules on confidentiality, provided however, that, after resolution of the panel's decision, in an executive session of a Board meeting, the Board may, by majority vote, make public any such letter or a summary of any such letter, with confidential or identifying information redacted.
- (ii) Board staff must maintain confidentiality in accordance with Section 197.12, even after case closure, unless and until directed by the Board, and in the manner as determined by the Board.

(E) If staff becomes aware of a past or ongoing violation through a good-faith request for advice, staff must advise the requestor to immediately cease the violative conduct, recommend disclosure, and explain the benefits of self-reporting. Staff shall also recommend the requestor consult with the City Solicitor and explain the benefits under 65 Pa CS 1109(g).

(F) "Notification" Correspondence – A private admonition must remain confidential pursuant to this regulation and application of 197.12, and 197.16 on public censure. Acknowledgement of private admonition is not permitted to be disclosed outside of the procedure specified in C(i) above. Though the subject of a complaint may receive a private admonition letter in closing, the complainant shall receive only the standard case closure letter indicating dismissal. This standard closure letter can discuss this non-hearing violation policy in general terms, as well as the Board's practice related to referrals, but must not reveal to the Complainant the statutorily confidential information of the existence or nonexistence of private admonition/referral in a particular matter. A referral is not an admonition but may be perceived as such and so is subject to the same rules on confidentiality.

**Impact:**

In adopting this regulation, the Board's approach to "minor" violations becomes clearer, more consistent, and more accountable. By adding explicit criteria, the public is assured that the Board is not acting based solely on discretion; and formalizes existing practices to evaluate whether the

violation is clear on its face (such as a failure to file, political activity, or nepotism), whether the conduct complies with the Code, and what remedial steps may be warranted. By providing an option for referral or a private letter of warning/admonition, this adds a step to ensure the issues are addressed and educational, rather than a vague or blanket dismissal letter. Furthermore, referral to OMI can demonstrate the panel's support for their review as to recommending disciplinary action and serves as a vehicle to notify management and ensure transparency of troubling conduct requiring further consideration.

This policy also serves to assist future Board members serving on the probable cause panel to preserve guidance on practical and prudent evaluation.

Finally, this policy assists staff with direction in how to manage accidental admissions of parties seeking advice in good faith.

**For reference:**

**Code with relevant portion highlighted:**

§ 197.12 Complaints, Investigations and Hearings.

**(a) Complaint.**

- (1) Upon receipt of a complaint on a form prepared by the Ethics Hearing Board, which any person or entity may file, three (3) members of the Board shall be chosen by the Board to form a Probable Cause Panel.
- (2) Within thirty (30) days of receipt of the complaint, the Probable Cause Panel will determine if the complaint, in fact, alleges an action or inaction that, if the allegations are true, might constitute a violation of this Code and that at least one (1) person or entity accused of a violation is covered by this Code.
- (3) If no opinion is rendered within thirty (30) days, the Probable Cause Panel must provide a written explanation to the complainant as to the reason for the delay.
- (4) If the Probable Cause Panel determines by a majority vote that no such action or inaction has been alleged or that no one accused is covered by this Code then it will dismiss the complaint with notice to the complainant and subject of the investigation ("subject"). If, in exercising its discretion, it determines that the nature of the violation is minor, then it will dismiss the complaint with notice to the complainant and the subject. The "subject" of an investigation is the person accused of violating the Code. Here and elsewhere "complainant" and "subject" may consist of more than one (1) person or entity.

(5) Members of the Probable Cause Panel may not participate in the adjudication of guilt phase of the case.

(6) If the Probable Cause Panel determines that there is probable cause, it will send notification of this finding with a copy of the complaint and any amendments to the complainant and subject by certified or registered mail.

(7) The letter of dismissal or notification of finding must be sent within five (5) working days after the vote on probable cause.

(8) A complaint must be filed within the longer of either one (1) year after the alleged violation took place or ninety (90) days after complainant became aware of the alleged violation.

(9) The Ethics Hearing Board may, on its own initiative, determine through an inquiry into informal allegations or information provided directly to the Ethics Hearing Board, through the hotline, by referral, in the public news media, or otherwise that a violation of this Code may exist, and prepare a complaint of its own. An internally originated complaint must still be considered by a Probable Cause Panel.

(10) The Ethics Hearing Board may amend a complaint that has been filed with it by adding further allegations, by adding subjects involved in the same conduct. The Ethics Hearing Board may also consolidate complaints where the allegations are materially related.

(11) Complainant and subject must preserve all records pertaining to the allegations. Records include, but are not limited to, documents, e-mails, voicemails, text messages or any other type of physical, digital, or oral communication.