

**Macomb County Ethics Board  
Rules of Procedure**

AN AMENDMENT TO AMEND MACOMB COUNTY ETHICS BOARD RULES OF PROCEDURES WHICH WERE APPROVED BY THE MACOMB COUNTY BOARD OF COMMISSIONERS ON SEPTEMBER 27, 2012, IN COMPLIANCE WITH SECTIONS 2.4 AND 2.5.1 OF THE HOME RULE CHARTER OF MACOMB COUNTY, MICHIGAN AND ENROLLED ORDINANCE 2019-05.

THE MACOMB COUNTY ETHICS BOARD SHALL BE GOVERNED  
BY THESE RULES OF PROCEDURE

**SECTION 1. AUTHORITY, PURPOSE, AND DEFINITIONS**

- (a) **Authority.** These Rules of Procedure are prepared by the authority conferred on the Ethics Board by Section 2.4 and Section 2.5.1 of the Home Rule Charter of Macomb County, Michigan as well as Enrolled Ordinance No. 2019-05 adopted and published by the Macomb County Board of Commissioners on December 12, 2019.
- (b) **Purpose.** The purpose of these Rules is to provide a due process procedure and practice for the Ethics Board to facilitate advisory opinion requests and process complaints alleging violations of applicable ethics provisions cited in Article II, Section 2.3 of the Home Rule Charter of Macomb County, Michigan and Macomb County Enrolled Ordinance No. 2019-05 with accompanying sanctions. Secondly, to educate and appropriately raise consciousness of all Macomb County Public Servants, as defined in the Ordinance (Article 1, Section 4., gg.) relative to the significance and applicability of the Home Rule Charter and Enrolled Ordinance No. 2019-05.
- (c) **Definitions.** The definitions set forth in Article 1, Section 4 of Enrolled Ordinance 2019-05, are hereby adopted and incorporated by reference in this Macomb County Ethics Board Rules of Procedure.
- (d) **Applicability.** These rules are applicable to and are to be employed in conjunction with Macomb County Enrolled Ordinance 2019-05.

**SECTION 2. COMPOSITION, POWERS, AND AUTHORITY**

- (a) **Composition and Appointment.** The Ethics Board shall be comprised of members appointed in accordance with County Charter Article II, Section 2.4.
- (b) **Powers and Duties.** The Ethics Board shall have the powers and duties provided in Article II, Section 2.5 of the Macomb County Home Rule Charter as well as powers and duties enumerated in Enrolled Ordinance 2019-05.

### **SECTION 3. SUBJECT MATTER JURISDICTION**

- (a) Jurisdiction over the subject matters of advisory opinion requests and ethics complaints. Subject matter jurisdiction is a mandatory prerequisite to the Ethics Board's exercise of its authority as provided under Enrolled Ordinance 2019-05.
- (b) The Ethics Board shall have and exercise subject matter jurisdiction over all requests for advisory opinions and complaints arising under Sections 5 through 9 of Macomb County Enrolled Ordinance 2019-05.

### **SECTION 4. PERSONAL JURISDICTION**

- (a) Jurisdiction over a public servant identified in an ethics complaint is a mandatory prerequisite to the Ethics Board's exercise of its authority as provided under the Home Rule Charter of Macomb County, Michigan and Enrolled Ordinance 2019-05.
- (b) The Ethics Board shall have and shall exercise personal jurisdiction over all Public Servants employed by the County at the time of an act or omission from which a complaint arises, at the time the complaint is filed, and at the time the complaint is adjudicated.
- (c) The Ethics Board shall lose personal jurisdiction over a public servant identified in an ethics complaint if at any time prior to the final adjudication of a complaint, the respondent public servant separates from active duty employment with the County.
- (d) The Ethics Board's announcement of its findings and the penalty to be imposed, if any, constitutes final adjudication of an ethics complaint.

### **SECTION 5. ADVISORY OPINIONS**

- (a) Section 2.5.3 of Home Rule Charter prescribes that the Ethics Board enable a procedure whereby a Public Servant may obtain informal guidance for understanding and complying with applicable ethics standards.
- (b) The preferred and most expedient way in which to file an Advisory Opinion Request with the Ethics Board administrative secretary is via e-mail. All such opinion requests must be in writing and signed by the Public Servant when submitting an Ethics Advisory Opinion Request Form to: [ethicsboard@macombgov.org](mailto:ethicsboard@macombgov.org) Blank forms are easily available at the Macomb County Ethics Board Website (<https://ethics.macombgov.org/Ethics-Home>). Directions for submitting the Complaint Forms via e-mail are located at the bottom of the form second page.
- (c) Alternatively, an Ethics Advisory Opinion Form can be filed with the Ethics Board by serving the Board administrative secretary, either personally or via United States Postal Service mail, at 120 North Main Street, 2<sup>nd</sup> Floor, Mt Clemens, Michigan, 48043.

- (d) Upon request of a Public Servant, the Ethics Board may issue an informal advisory opinion regarding a specific question relative to a standard cited in Enrolled Ordinance 2019-05, Sections 5 through 9.
- (e) A Public Servant's request for an advisory opinion shall be limited to a contemplated course of conduct not yet acted upon by the Public Servant.
- (f) The advisory opinion request must fully and fairly provide sufficient factual information concerning the Public Servant's possible course of conduct to enable the Ethics Board to acquire a full understanding of the question in order to form an opinion.
- (g) The Ethics Board reserves the right to investigate any question or claim posed by a Public Servant in order to form an opinion and respond to the inquiring Public Servant. Investigative assistance may be requested from the Office of Macomb County Sheriff and/or Office of Macomb County Prosecutor.
- (h) The Ethics Board Chairperson, or Vice Chairperson in his or her absence, may deny any advisory opinion request for any of the following reasons to include, but not limited to:
  - (1) The Ethics Board lacks jurisdiction over the person subject to the advisory opinion.
  - (2) The Ethics Board lacks jurisdiction over the subject matter.
  - (3) The request is barred because the subject matter is being or was litigated in court.
  - (4) The request on its face fails to state a claim of unethical conduct.
- (i) The Ethics Board may issue an opinion to the requesting Public Servant within thirty (30) days upon receipt, unless a time extension is necessary.
- (j) The Ethics Board Advisory Opinion shall be transmitted to the Public Servant filing the request and other persons directed by the Board.
- (k) The Ethics Board may, on its own initiative and without receiving a request, investigate and issue an advisory opinion on any matter arising under Sections 5 through 9 of Macomb County Enrolled Ordinance 2019-05.

## **SECTION 6. COMPLAINTS**

- (a) Summary Disposition of a Complaint. Summary disposition of an ethics complaint shall be expressly limited to only:
  - (1) Complaints which fail to allege acts or conduct prohibited by Sections 5 through 9 of Enrolled Ordinance 2019-05, or
  - (2) Which do not name a County Public Servant as a Respondent.

- (b) Summary Disposition tests the sufficiency of the complaint and nothing beyond the complaint and its attachments, exhibits, or other supporting documentation, may be considered.
- (c) Within 14 days after its receipt by the Board administrative secretary, the Ethics Board Chairperson shall review the complaint for the limited purpose of determining whether:
  - (1) The Complaint states a claim recognized under Sections 5 through 9 of Enrolled Ordinance 2019-05, and whether the Respondent, and
  - (2) The Respondent is, at that time, a County Public Servant as defined in Enrolled Ordinance 2019-05.
- (d) The Ethics Board Chairperson, acting alone, may summarily dispose of a complaint without further investigation or hearing in the event the complaint fails to satisfy both of the requirements detailed immediately above, paragraphs (c)(1) and (2).
- (e) In the event a Complaint is summarily disposed of on this basis, the Complainant shall be notified of the summary disposition and the underlying reasons in writing within 14 days of such determination.
- (f) The Board Chairperson shall inform the Board of the Summary Disposition of the Complaint, and the reasons therefor, at the first public meeting of the Board conducted thereafter regardless of whether the meeting is regularly scheduled or convened specially for any purpose.
- (g) At that public meeting, or a public meeting conducted within 14 days thereafter, the Board acting as a whole may override the Chairperson's determination and set aside the summary disposition by a simple majority vote of all serving members conducted after a motion and second calling for such vote.
- (h) In the event the Chairperson's summary disposition determination is overridden by the Board acting as a whole, the Complainant shall be informed in writing within 14 days of the decision to override the summary disposition determination.
- (i) In the absence of action taken to override the Chairperson's summary disposition determination, the Chairperson's determination shall not be subject to further challenge except by a court as provided by law.

## **SECTION 7. INVESTIGATIONS**

- (a) A complaint which is not summarily disposed of shall be investigated by the Ethics Board so long as the Board first determines that the complaint is supported by probable cause.

- (b) For the purpose of these rules, probable cause is satisfied where there is an objectively reasonable belief that a provision found in Sections 5 through 9 of Enrolled Ordinance 2019-05 has been violated, coupled with an objectively reasonable belief that the Respondent was implicated in some manner in that violation. This determination is to be made on the basis of the complaint and any supporting documentation submitted therewith.
- (c) The Board's probable cause review shall be undertaken at the first public meeting convened following the latter of either the either the expiration of the time provided for the Chairperson to exercise his or her summary disposition authority, or the meeting at which the Board as a whole overrode the Chairperson's summary disposition determination'
- (d) The Board's probable cause determination shall be made by simple majority vote of the members then in attendance, and shall be made a part of the record of that meeting.
- (e) In the event the Board determines the complaint is not supported by probable cause, the complaint is dismissed and no further action may be taken on it. However:
  - (1) The Complainant shall be notified of the probable cause determination and dismissal within 14 days of such action, and
  - (2) The Respondent may at that time be notified that a complaint was filed and the nature of the allegations of the complaint, but the identity of the Complainant shall not be disclosed.
- (f) In the event the Board determines the complaint is supported by probable cause and as a result it is not dismissed, The Board shall conduct an investigation of the matters raised in the complaint.
- (g) To the greatest extent made possible considering its complexity and scope, the investigation of an ethics complaint should be completed within 60 days of the Board's probable cause determination. For good cause or with the consent of the Complainant, the Ethics Board may extend the time for a decision or action on a complaint for an additional 30 days. Failure to complete an investigation within the time periods herein shall not be construed as error divesting the Ethics Board of its subject matter or personal jurisdiction and shall not be constitute a basis or grounds for the dismissal of a complaint.
- (h) The investigation may include the gathering, examination, and analysis of records including video and audio data, the inspection of tangible objects, interviewing and taking written statements of witnesses and consulting with others whose specialized education, training, or experience may assist the Board's understanding of the issues presented in a complaint.
- (i) To assist it in the conduct of its investigation, the Ethics Board may:

- (1) Issue subpoenas to compel the production of non-privileged records and to compel the appearances of witnesses at a public hearing on a complaint;
  - (2) Request the assistance of the Macomb County Sheriff's Office
  - (3) Request the assistance of the Corporation Counsel's Office; and
  - (4) In those matters where the Corporation Counsel's Office is not available as the result of a conflict of interest, the Board may seek legal advice from retained legal counsel, subject to available budget appropriations.
  - (5) Retain the services of private investigators subject to available budget appropriations.
- j. In the event a Complainant fails or refuses to cooperate in the investigation or adjudication of his or her complaint, whether expressly or by failure to respond to a reasonable request for an interview, additional information, or a more definite statement of his or her complaint, or by failing to appear or otherwise be represented by another at the time, place, and on the date established for a hearing on his or her complaint, that complaint shall be subject to dismissal upon a simple majority vote of the Board members in attendance at a regularly conducted public meeting.

#### SECTION 8. SUMMARY DISMISSAL OF A COMPLAINT AFTER INVESTIGATION

- (a) At the conclusion of an investigation, the Ethics Board may summarily dismiss a complaint if the available evidence fails to establish either:
  - (1) A violation of Enrolled Ordinance 2019-05, or
  - (2) Personal involvement by the Respondent in any alleged violation that may have otherwise been committed.
- (b) The Ethics Board's discussion of and decision to summarily dismiss a complaint for failure to present a genuine issue of material fact shall be made in an open meeting.
- (c) The determination to summarily dismiss a complaint after an investigation shall be made by a simple majority vote of all serving members conducted in the first public meeting conducted after the conclusion of the corresponding investigation.
- (d) In the event a complaint is summarily dismissed:
  - (1) The Complainant shall be notified of the summary dismissal and the underlying reasons within 14 days of the dismissal.
  - (2) If not previously informed, the Respondent may be notified that a complaint was filed and the nature of the allegations of the complaint, but the identity of the Complainant shall not be disclosed.

- (e) If the available evidence shows the existence of a genuine issue of material fact regarding whether Enrolled the Ordinance 2019-05 was violated by the Respondent, the complaint shall not be summarily dismissed and the complaint shall proceed to a hearing forthwith on the merits of the claim.
- (f) Complainants and Respondents are to be notified in writing of the complaint and shall not take retaliatory action of any type against any party to the action. Such retaliatory action itself is a violation of Home Rule Charter, Article II, Section 2.7. Such notice shall be made in writing via certified mail and/or email (i.e., first name.last name@macombgov.org).

#### SECTION 9. PREHEARING MATTERS.

- (a) Within 7 days of the Ethics Board's determination that a complaint will not be summarily dismissed, both the Complainant and the Respondent shall be notified in writing by email and mail sent via United States Postal Service that the Board will conduct a hearing on the complaint.
- (b) The Respondent shall at that time be provided with a copy of the Complaint, its attachments, exhibits, or other supporting documentation; both the Complainant and the Respondent shall be provided copies of all inculpatory and exculpatory evidence of any type or kind developed by the Ethics Board during the course of its investigation.
- (c) Both the Complainant and the Respondent shall be provided no less than 14 calendar days' notice of the hearing date, time, and place.
- (d) At the Ethics Board's request, the Corporation Counsel may function as the Ethics Board's legal advisor before, during, and after the hearing. In those matters where the Corporation Counsel's Office is not available as the result of a conflict of interest, the Board may retain the services of outside legal counsel, subject to available budget appropriations. Corporation Counsel shall not be available to represent a Respondent.
- (e) A Respondent may be represented by a designated spokesperson or by legal counsel provided at the Respondent's sole expense.

#### SECTION 10. HEARINGS ON A COMPLAINT

- (a) Ethics Complaint Hearing Advisories
  - (1) Remote testimony: Although testimony provided in person before the Ethics Board Complaint Hearing Panel is preferred, parties and witnesses to an ethics hearing may be permitted in hearings by teleconference or videoconference at the discretion of the Ethics Board Chairperson, or his/her designate.

- (2) Postponements: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, time, or when the Ethics Board Complaint Hearing Panel determines that denying the continuance would deny the requestor a fair hearing. All requests for continuance must be in writing and submitted to the Ethics Board Chairperson, or designate. All parties will be advised of the rescheduled hearing date.
  - (3) Recording: All Ethics Complaint Hearings will be recorded by the Board's administrative secretary. In addition, a court reporter may be hired at the expense of the requesting party. Videotaping is permitted with the advance express consent in writing by the parties and Ethics Board Complaint Hearing Panelists.
  - (4) Method and objective of procedure: The Ethics Board Complaint Hearing Panel is not bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.
  - (5) Legal Counsel: While the County of Macomb will not provide legal advice or representation to any ethics complainant, respondent, or witness; the Macomb County Ethics Board reserves the right to seek legal advice from the Office of Macomb County Corporation Counsel. In those matters where the Corporation Counsel's Office is not available as the result of a conflict of interest, the Board may seek legal advice from retained legal counsel, subject to available budget appropriations. Reserving this right is a consequence of the due process concept not being difficult, but its application to specific situations involving enforcement of the Ethics Ordinance can be troublesome for lay volunteers. Secondly, taking any disciplinary action which may lead to the diminution of a Public Servant's rights or privileges most always necessitates the respected advice and opinions of legal counsel.
  - (6) All hearings on a complaint shall be conducted during the course of the first regularly scheduled Ethics Board meeting conducted after notifying the Complainant and Respondent of the pendency of the hearing, but such meeting shall not be conducted less than 14 days after providing the Complainant and Respondent.
    - (b) The meeting during which the hearing is conducted shall be open to the public unless the Respondent expressly requests in writing signed by the Respondent that the hearing be conducted in a closed session in accordance with MCL 15.268(a). The Respondent may rescind his or her request for a closed session at any time, including at any point during the hearing, and the hearing may then only proceed in an open session.
- (c) Complainant's Burden.
- (1) The Complainant bears the burden of going forward and shall present his or her evidence and argument before the Respondent is called upon to present his or her defenses. The Complainant shall be afforded the opportunity to present and

support his or her claims through witness testimony, the submission of records and documentary matters, video and audio, and the presentation of tangible objects.

- (2) The Complainant bears the burden of proof and must prove his or her claim by a preponderance of the evidence. A preponderance of the evidence is defined as the quality or weight of evidence that makes a point in controversy more likely than not likely. A preponderance of the evidence is a 50.01% certainty standard.

(d) Complainant's Rights. The Complainant shall be afforded:

- (1) Legible copies of the complaint and all the attachments, exhibits, or allied documents submitted therewith to the Ethics Board;
- (2) Legible copies of all evidence provided to the Ethics Board during the course of its investigation by any source whatsoever;
- (3) The right to be represented by a designated spokesperson or by legal counsel retained by the Complainant at his or her sole expense;
- (4) The right to testify and be heard;
- (5) The right to present evidence including witness testimony, documentary, video, audio, and tangible objects in support of his or her Complaint.
- (6) The right to confront the evidence and cross-examine witnesses presented by the Respondent in support of his or her defenses.

(e) Respondent's Rights. The Respondent shall be afforded due process including:

- (1) Legible copies of the complaint and all the attachments, exhibits, or allied documents submitted therewith to the Ethics Board;
- (2) Legible copies of all evidence provided to the Ethics Board during the course of its investigation by any source whatsoever;
- (3) The right to be represented by a designated spokesperson or by legal counsel retained by the Respondent at his or her sole expense;
- (4) The right to testify and be heard;
- (5) The right to confront the evidence and cross-examine witnesses presented by the Complainant in support of the allegations of his or her complaint;
- (6) The right to present exculpatory evidence and witnesses;

- (f) Participation by the Ethics Board. During the course of a hearing, the Ethics Board may participate in the following manners:
- (1) Question witnesses for the purpose of clarifying testimony or clarifying the content or meaning of documentary, video, audio, or tangible evidence offered by either party.
  - (2) Determine the weight of the evidence and the credibility of witness testimony as such may deserve in the Board's sound discretion. The Board may, during its deliberations discuss and comment of such matters, but the Board shall have no independent duty or obligation to document or otherwise reduce such discretionary judgments to writing.
  - (3) Cause the hearing to be recorded by audio alone, or by video and audio means.
  - (4) The Board shall consider and render its decision only upon the evidence presented by the parties during the course of the hearing, and shall disregard any other matters, information, or evidence of which it may be aware.
  - (5) The Board shall draw no adverse inference from either party's decisions to forego testifying personally or their decision to forego presentation of evidentiary matters which may otherwise appear relevant to supporting the parties' positions.
  - (6) Deliberate and render its decision in a session of the meeting open to the public unless the Respondent requests in writing signed by the Respondent that deliberations and announcement of the Board's decision be conducted in a closed session.
  - (5) Cause the record of the hearing, including its audio or audio/video recording, and copies of all evidence received, to be preserved for no less than seven years.
- (g) Admissibility of Evidence. The technical evidentiary rules applicable in a civil or criminal court shall not be strictly applied. Nonetheless, the Board shall be authorized to exercise its discretion and accept or reject evidence offered by either party which is:
- (1) Without relevance to resolving the issues before the Board. For the purpose of these Rules, evidence which has some tendency to prove or disprove a disputed issue is relevant.
  - (2) Offered for the purpose of embarrassing, humiliating, or unfairly prejudicing a party.
  - (3) Hearsay derived from an individual or documentary source not otherwise presented during the course of the hearing. Spoken or written statements of the opposing party are not hearsay when offered against the party who made the statement.

- (h) To the extent witnesses for either the Complainant or Respondent are County Public Servants, appearance at an Ethics Board hearing shall be considered to be within the scope of the Public Servant's official duties and his or her supervisor or department directors shall not deny permission to appear during ordinary workhours. Overtime, comp-time, or other compensation shall not be paid to Public Servants appearing for an Ethics Hearing conducted outside of his or her ordinary work hours.
- (i) Gathering evidence and securing the appearance of witnesses shall be the exclusive responsibility of the Complainant and Respondent, and the Ethics Board shall have no obligation to gather evidence or secure the appearance of witnesses for either party.
- (j) All testimony shall be given under oath in the following form administered by the Board chairperson.

*Do you swear or affirm that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth?*

- (k) The Ethics Board shall not at any time provide legal advice to either the Complainant or Respondent.
- (l) A decision on the merits of a Complaint shall be rendered by simple majority vote of all Board members present.
  - (1) Deliberations, the vote, and the decision thereon shall be rendered in the open meeting during which the hearing is conducted, or in the first meeting conducted for any reason thereafter.
  - (2) If the vote is taken in a subsequent meeting, only those Board members present at the hearing may vote.
  - (3) A tied vote shall constitute a decision in the Respondent's favor.
  - (4) The form of the Board's decision shall be either:

*The Board hereby finds that (Respondent's Name) violated Section (alpha-numeric identifier) of Macomb County Enrolled Ordinance 2019-05.*

or

*The Board hereby finds that (Respondent's Name) committed no violation of Macomb County Enrolled Ordinance 2019-05.*

- (5) The Ethics Board shall also document its findings in writing and provide a copy to both the Complainant and Respondent within three (3) business days after the hearing. Written notification shall be by electronic mail and/or certified mail sent via the United States Postal Service.

(m) Any sanction imposed will be in accordance with Enrolled Ordinance 2019-5, Section 11, a.-d., and cited in the Board’s decisions. All fines will be made payable to the County of Macomb within sixty (60) days. Failure to pay a fine may result in civil collection action and/or reported to Credit Bureau Services of Michigan and All State Credit Bureau, Inc.

(n) The Ethics Boards decisions are final and are reviewable only by a court as provided by law.

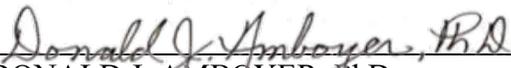
SECTION 11. RECORDS.

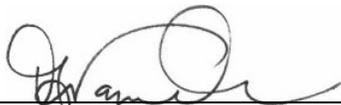
(a) Records Retention. All records related to a complaint, including all documentary and tangible evidence developed by the Board during the course of its investigation, and all evidence offered and received by either party or their representatives during the course of a hearing on a complaint, and all recordings of all meetings, hearings, or proceedings during which the complaint was discussed or otherwise treated, shall be retained for no less than seven years after the date the hearing reaches final conclusion. Records need not be retained in hard copy format but may instead be reduced to digital/electronic format including photographs of tangible objects.

(b) Public Access. All records related to a complaint, including all documentary and tangible evidence developed by the Board during the course of its investigation, and all evidence offered and received by either party or their representatives during the course of a hearing on a complaint, and all recordings of all meetings, hearings, or proceedings during which the complaint was discussed or otherwise treated, are subject to disclosure as provided by Michigan’s Freedom of Information Act, MCL 15.231 et. seq. All requests for such records shall be forwarded to the County’s FOIA Coordinator at the Office of the Corporation Counsel for response.

(nothing follows)

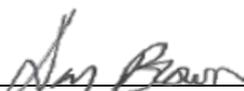
Adopted by Macomb County Ethics Board on April 29, 2021.

  
DONALD J. AMBOYER, PhD  
Chairperson

  
DORIE VAZQUEZ-NOLAN  
Vice Chair

Submitted to the Macomb County Board of Commissioners on April 14, 2021.

Approved by the Macomb County Board of Commissioners on April 29, 2021.

  
DON BROWN, Chair  
Macomb County Board of Commissioners

  
ANTHONY G. FORLINI  
Clerk and Register of Deeds

**Appendix A**  
**Summary of Timing Considerations**

<b>Event</b>	<b>Action</b>	<b>Deadline</b>	<b>Section and Paragraph</b>
Advisory Opinion	Issue Opinion	30 days after receiving request	5(i)
Jurisdictional Review	Make Determination	14 days after receiving complaint	6(c)
Summary Disposition on Jurisdictional Grounds	Notify Complainant in Writing	14 days after dismissal	6(e)
	Notify Board of Summary Disposition	Next Meeting	6(f)
	Board Reviews Chair's Summary Disposition	Same meeting or next meeting within 14 days	6(g)
Board Overrides Summary Disposition	Notify Complainant Jurisdictional Dismissal	14 days after override	6(h)
Dismissal for lack of Probable Cause	Notify Complainant	14 days after dismissal	7(e)(1)
Investigation	Conducted and Completed	60 days after probable cause determination (additional 30 days with consent)	7(g)
Summary Dismissal For Insufficient Evidence	Board Determines Complaint not Supported by Evidence	next meeting after investigation is concluded	8(c)
	Must Notify Complainant May notify Respondent	14 days after dismissal	8(d)
Pre-Hearing	Notify Parties that A Hearing will be Conducted	14 days after investigation concluded	9(a)
	Provide Parties copy of Complaint, Attachments, Supporting Documentation	with notice that hearing will be conducted	9(b)
	Notify Parties of Hearing Date	14 days in advance of hearing date	9(c) and 10(a)(6)
Hearing	Notify Parties of Decision	3 days after hearing date	10(l)(5)
Sanction	Paid	60 Days	10(m)

**Appendix B  
Hearing Script**

Agenda Item \_\_\_\_\_: an evidentiary hearing on Ethics Complaint number \_\_\_\_\_, which identifies \_\_\_\_\_ as the Complainant and \_\_\_\_\_ as the Respondent.

This is the time and place designated for the Ethics Board’s evidentiary hearing on the merits of Ethics Complaint \_\_\_\_\_. The Complainant in this matter is \_\_\_\_\_: The Respondent is \_\_\_\_\_.

The Complaint alleges violation of Enrolled Ordinance 2019-05. More specifically, the Complaint alleges Respondent violated Ordinance Section(s) \_\_\_\_\_ by committing the following acts or omissions:

- a. On or about (date) \_\_\_\_\_
- b. On or about (date) \_\_\_\_\_
- c. On or about (date) \_\_\_\_\_
- d. On or about (date) \_\_\_\_\_

The Complaint was filed on \_\_\_\_\_. It was thereafter reviewed to determine both subject matter and personal jurisdiction, whether it was supported by probable cause, and whether it was supported by sufficient evidence to present a genuine issue of material fact regarding whether Respondent violated Enrolled Ordinance 2019-05. These determinations should not be construed as indicating that the Board members have formed any opinions or reached any conclusions regarding whether the Complaint is supported by a preponderance of the evidence.

**Advice of Rights to Complainant:**

Complainant, \_\_\_\_\_ are you present?

You have the burden of proof. The burden of proof applicable here is what is known as a preponderance of the evidence. A preponderance of the evidence means the evidence supporting your complaint outweighs any contrary evidence, even if the evidence supporting your complaint outweighs any contrary evidence by just the slightest amount. It may be useful to think of a preponderance of the evidence as being 51% certainty.

You also have the burden of going forward and presenting your case to the Board. You may represent yourself or you may do so through a designated spokesperson or by legal counsel retained by you at his or her sole expense.

You have the right to testify and be heard. You also have the right to present evidence including witness testimony, documents, video, audio, and tangible objects to support the claims reflected in your complaint. You further have the right to confront and challenge the weight, accuracy, and reliability of the evidence and cross-examine witnesses presented by the Respondent in support of his or her defenses.

You may also make an opening statement prior to presenting your evidence, and you may make a closing statement summarizing the evidence at the end of the hearing. Alternatively you may elect to waive making either or both an opening or closing statement.

**Advice of Rights to Respondent:**

Respondent \_\_\_\_\_, are you present?

You do not have the burden of proof in this matter. This means you do not have to prove your innocence. Nonetheless, you have the right to defend yourself against the claims made by the Complainant. You may represent yourself or you may do so through a designated spokesperson or by legal counsel retained by you at his or her sole expense;

You have the right to right to testify and be heard. You also have the right to present evidence including witness testimony, documents, video, audio, and tangible objects to support your defense(s) against the claims reflected in the Complainant's complaint. You further have the right to confront and challenge the weight, accuracy, and reliability of the evidence and cross-examine witnesses presented by the Complainant in support of his or her claims.

You too may also make an opening statement prior to the Complainant presenting his or her evidence, and you may make a closing statement summarizing the evidence following the Complainant's closing summation at the end of the hearing. Alternatively you may elect to waive making either or both an opening or closing statement.

You may present your case yourself, or you may do so through a designated spokesperson or by legal counsel retained by you at his or her sole expense.

You have the right to testify and be heard. You also have the right to present evidence including witness testimony, documents, video, audio, and tangible objects to support the claims reflected in your complaint. You further have the right to confront and challenge the weight, accuracy, and reliability of the evidence and cross-examine witnesses presented by the Respondent in support of his or her defenses.

You may also make an opening statement prior to presenting your evidence, and you may make a closing stamen summarizing the evidence at the end of the hearing.

**Advice of Rights for both Claimant and Respondent:**

All witnesses will be sworn and subject to cross examination by the Respondent or the Respondent's representative. All witnesses will also be subject to questioning by members of the Board. You may object to any questions asked during cross examination.

The technical evidentiary rules applicable in a civil or criminal court shall not be strictly applied. Nonetheless, the Board is authorized to exercise its discretion and accept or reject evidence offered by either party which is:

- (1) Without relevance to resolving the issues before the Board;
- (2) Offered for the purpose of embarrassing, humiliating, or unfairly prejudicing a party; or
- (3) Hearsay derived from an individual or documentary source not otherwise presented during the course of the hearing.

Gathering evidence and securing the appearance of witnesses is the exclusive responsibility of the Complainant and Respondent, and the Ethics Board shall have no obligation to gather evidence or secure the appearance of witnesses for either party. Similarly, neither the Board nor its legal counsel may provide you legal advice.

The Board will render its decision based on a simple majority vote of all Board members present.

Complainant, do you wish to make an opening statement?

Respondent, do you wish to make an opening statement?

*(at the conclusion of opening statements, the Complainant presents his or her case)*

Complainant, please proceed with your presentation.

Complainant, does this conclude your presentation?

*(at the conclusion of the Complainant's presentation, the Respondent presents his or her case)*

Respondent, please proceed with your presentation.

Respondent, Does this conclude your presentation?

*(at the conclusion of the Respondent's case, move on to closing statements)*

Complainant, do you wish to make a closing summary statement?

Respondent, do you wish to make a closing summary statement?

(at the conclusion of the closing statements, the Board deliberates, votes on a finding, and announces its decision on (1) whether the Respondent has violated the Ordinance as alleged in the complaint, and (2) if so, what sanction will be imposed.)

**Form of the Board's Decision:**

*The Board hereby finds that (Respondent's Name) violated Section (alpha-numeric identifier) of Macomb County Enrolled Ordinance 2019-05.*

or

*The Board hereby finds that (Respondent's Name) committed no violation of Macomb County Enrolled Ordinance 2019-05.*

## Appendix C Flow Chart

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