

Town of Amherst, New York
Board of Ethics
Rules and Procedures for Adjudicatory Proceedings

The following rules and procedures are adopted by the Town of Amherst Board of Ethics pursuant to Section 19-7 of the Town of Amherst Code of Ethics and are to be utilized in all adjudicatory proceedings.

Hearing

1. In an adjudicatory proceeding, all parties shall be afforded an opportunity for hearing within reasonable time.
2. All parties shall be given reasonable notice of such hearing, which notice shall include (a) a statement of the time, place, and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved, where possible; and (d) a short and plain statement of matters asserted.
3. All parties shall be afforded an opportunity to present written argument on issues of law and an opportunity to present evidence and such argument on issues of fact, provided however that nothing contained herein shall be construed to prohibit the Board of Ethics from allowing parties to present oral argument within a reasonable time. In fixing the time and place for hearings and oral argument, due regard shall be had for the convenience of the parties.
4. Unless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.

Record

1. The record in an adjudicatory proceeding shall include: (a) all notices, pleadings, motions, intermediate rulings; (b) evidence presented; (c) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose; (d) questions and offers of proof, objections thereto, and rulings thereon; (e) proposed findings and exceptions, if any; (f) any findings of fact, conclusions of law or other recommendations made by a presiding officer; and (g) any decision, determination, opinion, order or report rendered.
2. The Board of Ethics shall make a complete record of all adjudicatory proceedings conducted before it. For this purpose, unless otherwise required by statute, the Board of Ethics may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Upon request made by any party upon the Board of Ethics within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the Board of Ethics shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to any party as he may

request. Except when any statute provides otherwise, the Board of Ethics is authorized to charge not more than its cost for the preparation and furnishing of such record or transcript or any part thereof, or the rate specified in the contract between the Board of Ethics and a contractor if prepared by a private contractor.

3. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Presiding Officers

Except as otherwise provided by statute, the Board of Ethics or one or more of its members shall be presiding officers. Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the Board of Ethics shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding. Whenever a presiding officer is disqualified or it becomes impractical for him or her to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

Powers of Presiding Officers

Except as otherwise provided by statute, presiding officers are authorized to:

1. Administer oaths and affirmations.
2. Sign and issue subpoenas in the name of the Board of Ethics, at the request of any party, requiring attendance and giving of testimony between witnesses and the production of books, papers, documents and other evidence and said subpoenas shall be regulated by the civil practice law and rules. Nothing herein contained shall affect the authority of an attorney for the party to issue such subpoenas under the provisions of the civil practice law and rules.
3. Provide for the taking of testimony by deposition.
4. Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.
5. Direct the parties to appear and confer to consider the simplification of the issues by consent of the parties.

Evidence

1. No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence. Unless otherwise provided by any statute, the Board of Ethics need not observe the rules of evidence observed by courts, but shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and

shall be noted in the record. Subject to these requirements, the Board of Ethics may, for the purpose of expediting hearings, and when the interests of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

2. All evidence, including records and documents in the possession of the Board of Ethics of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.
3. A party shall have the right of cross-examination.
4. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Board of Ethics. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

Decisions, Determinations and Orders

1. A final decision, determination or order adverse to a party in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with Board of Ethics rules, a party submitted proposed findings of fact, the decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his attorney of record.
2. Unless required for the disposition of ex parte matters authorized by law, members of the Board of Ethics assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such Board of Ethics member (a) may communicate with other members of the Board, and (b) may have the aid and advice of Board of Ethics staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.
3. (a) The Board of Ethics shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the Board of Ethics in adjudicatory proceedings. For purposes of this subdivision, such index shall also include by name and subject all written final decisions, determinations and orders rendered by the Board of Ethics pursuant to a statute providing any party an opportunity to be heard, other than a rule making. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying. Each decision, determination and order shall be

indexed within sixty days after having been rendered.

(b) The Board of Ethics may delete from any such index, decision, determination or order any information that, if disclosed, would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of the public officers law and may also delete at the request of any person all references to trade secrets that, if disclosed, would cause substantial injury to the competitive position of such person. Information which would reveal confidential material protected by federal or state statute, shall be deleted from any such index, decision, determination or order.

Adopted: September 23, 2008

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