

**McHenry County  
Ethics Commission**

---

**OPERATING POLICY &  
PROCEDURES**

---

Approved by the McHenry County Ethics Commission

on October 28, 2019

Revised on December 5, 2019

Revised on August 11, 2021

Revised June 28, 2023

Revised November 8, 2023

# OPERATING POLICY AND PROCEDURES

## Table of Contents

GENERAL OPERATING POLICY .....	4
ARTICLE I        PURPOSE.....	5
ARTICLE II        CONSISTENCY WITH EXISTING LAW .....	5
ARTICLE III        DEFINITIONS.....	5
ARTICLE IV        MEETINGS .....	6
ARTICLE V        ORDER OF MEETING.....	7
ARTICLE VI        PUBLIC COMMENT .....	7
ARTICLE VII        MINUTES .....	8
ARTICLE VIII        VOTING .....	8
ARTICLE IX        COMMUNICATIONS WITH THE COMMISSION.....	9
ARTICLE X        COMPENSATION OF MEMBERS.....	9
ARTICLE XI        STANDARDS OF CONDUCT .....	9
ARTICLE XII        COMPLAINT PROCESSING AND ADJUDICATION PROCEDURES..	10
§ 12.01 Purpose.....	10
§ 12.02 Consistency with Existing Law .....	10
§ 12.03 Disqualifications of Ethics Commission Member .....	10
§ 12.04 Filing Complaints.....	11
§ 12.05 Sufficiency of Complaint and Probable Cause Examination.....	12
§ 12.06 Consent Agreements .....	14
§ 12.07 Pre-Hearing Conference.....	14
§ 12.08 Continuances.....	15
§ 12.09 Discovery .....	15
§ 12.10 Pre-Hearing Exchange of Information.....	16

§ 12.11 Venue and Hearing ..... 17

§ 12.12 Counsel ..... 17

§ 12.13 Chronology of the Administrative Hearing ..... 17

§ 12.14 Evidence..... 18

§ 12.15 Ex Parte Communications..... 19

§ 12.16 Default..... 20

§ 12.17 Findings and Decision/Effect of Election ..... 20

§ 12.18 Judicial Review ..... 20

§ 12.19 Enforcement of Fines and Penalties ..... 21

## **GENERAL OPERATING POLICY**

The McHenry County Ethics Commission was created pursuant to the McHenry County Ethics Ordinance, which was promulgated under the Illinois State Officials and Employees Ethics Act, 5 ILCS 430/1-1 *et.seq.* The Commission was created to provide a neutral forum for the independent and apolitical review of possible violations of the McHenry County Ethics Ordinance. The Commission is charged with the obligation to investigate complaints, conduct hearings and deliberations on allegations of violations of the County Ethics Ordinance, and adjudicate complaints or refer complaints to the McHenry County State’s Attorney’s Office. While there is an intrinsic political nature to elections and elected officials, the McHenry County Ethics Ordinance contemplates, and this Commission expects, that complaints will be filed on a good faith belief of an ethical violation. The Commission will use its best judgment and discretion to adhere to this “good faith” standard and to maintain a process that serves the best interests of the community and upholds the ethical principles of the Ordinance.

# **OPERATING PROCEDURES**

## **ARTICLE I – PURPOSE**

§ 1.01 The purpose of these procedures is to establish a uniform set of guidelines to be followed by the McHenry County Ethics Commission (“Commission”) as it conducts its business.

## **ARTICLE II – CONSISTENCY WITH EXISTING LAW**

§ 2.01 These procedures are to be interpreted consistent with the language set forth in the McHenry County Ethics Ordinance (“Ordinance”). In the event of a discrepancy between these procedures and the language of the Ordinance, the Ordinance shall govern.

## **ARTICLE III – DEFINITIONS**

In addition to the definitions provided in Section 2.64.020 of the McHenry County Ethics Ordinance, the following additional definitions for purposes of these procedures apply:

§ 3.01 “Administrative Hearing” means an administrative hearing, open to the public, following the Commission’s determination that Probable Cause exists to believe that a violation of Section 2.64.040 (Gift Ban) or Section 2.64.050 (Prohibition on Sexual Harassment) of the McHenry County Ethics Ordinance has occurred.

§ 3.02 “Complaint” refers to a written notarized complaint alleging an Ethics Ordinance violation that is signed by the Complainant in accordance with the Ethics Ordinance.

§ 3.03 “Complainant” means the person who verified the Complaint.

§ 3.04 “Party” means a Complainant or a Respondent.

§ 3.05 “Parties” means both the Complainant and the Respondent.

§ 3.06 “Participating member” means a member of the McHenry County Ethics Commission physically present and in attendance at a convened meeting of the McHenry County Ethics Commission.

§ 3.07 “Respondent” means a person or entity that is alleged in a verified Complaint to have violated the McHenry County Ethics Ordinance.

§ 3.08 “Sufficiency of Complaint and Probable Cause Examination” means a proceeding conducted by the Commission for the purpose of making a determination whether a Complaint is sufficient and whether Probable Cause exists.

§ 3.09 “Verify or Verified” means to confirm or substantiate by oath or affidavit. Particularly used in making formal oath to accounts, petitions, pleadings, and other papers and frequently used interchangeably with “sworn”.

§ 3.10 “Violation” means an action or inaction which is prohibited by the McHenry County Ethics Ordinance.

Other terms used in these procedures shall be defined in accordance with their usage in common language, except where such terms are defined in the McHenry County Ethics Ordinance. In the event of a discrepancy between the common language definition of a word and the definitions contained in the McHenry County Ethics Ordinance, the Ordinance shall govern.

#### **ARTICLE IV – MEETINGS**

§ 4.01 The Commission will meet two times per year at a regularly scheduled date and time, unless the Chairperson determines that there is no business to conduct. The decision of the Chairperson to not hold a meeting may be reversed if three Commission members wish a meeting to be held and so advise the McHenry County Deputy County Administrator. The Commission may meet more frequently than twice per year, if needed. The public notice requirements of the *Illinois Open Meetings Act*, 5 ILCS 120/1, *et seq.*, must be complied with, and the dates and times for meetings shall be posted as required by law.

§ 4.02 To the extent possible, the Commission will meet and conduct all regular business at the McHenry County Administration Building at 667 Ware Road, Woodstock, IL 60098.

§ 4.03 Three members of the Commission present at a meeting or a Hearing shall constitute a quorum. No meeting shall proceed or continue in the absence of a quorum.

§ 4.04 In-person attendance is the preferred method of participation by Commission members; however, members may participate by video or audio conference, telephone call or other electronic means pursuant to the requirements of Sections 1.02 and 2.01 of the *Illinois Open Meetings Act* (5 ILCS 120/1.02 & 2.01) during regularly scheduled Commission meetings and for the consideration of complaints at all stages except at the Administrative Hearing unless a gubernatorial executive order suspends provisions of the Open Meetings Act. Members of the Commission shall be physically present in order to participate at an Administrative Hearing unless a public emergency prohibits in-person gatherings and in the event thereof, participation by video or audio conference, telephone call or other electronic means shall be allowed.

§ 4.05 The Commission's meeting agenda will be prepared by the Deputy County Administrator and will be posted on the County's web site and at the County Administration Building at least 48 hours prior to any meeting, whether open or closed. Items not listed on the regular meeting agenda may be considered by the Commission, but no action may be taken on such items. Agenda items should be forwarded to the Deputy County Administrator at least 96 hours in advance of the scheduled meeting at which the item will be considered.

§ 4.06 The agenda will contain a meaningful description of each item to be transacted or discussed at the Commission meeting so as to alert those whose interests may be affected by the item that he or she may have reason to attend the meeting.

#### **ARTICLE V – ORDER OF MEETING**

§ 5.01 Commission meetings shall follow the order listed below, unless a proper motion is made to suspend the order:

(a) Call to Order. The Chairperson shall determine if a quorum is present and, if so, will call the meeting to order.

(b) Minutes

(c) Public Comment

(d) Old Business

(e) New Business

(f) Reports

(g) Member Comments / Future Topics

(h) Adjournment

§5.02 Wherever these rules are silent regarding a matter of procedure, the Commission shall conduct its meetings in accordance with the current edition of *Robert's Rules of Order*.

#### **ARTICLE VI – PUBLIC COMMENT**

§ 6.01 The public is welcome and encouraged to attend all open meetings of the Commission. All interested persons shall be allowed to express their views at the Commission meetings regarding matters within the Commission's jurisdiction. All Commission meetings shall provide the public an opportunity to comment on both agenda items and matters not listed on the agenda but within the Commission's jurisdiction. Such opportunity for public comment will appear as an item on the

agenda. Public comment will be allowed on the agenda before the business portion of the meeting. Public comment will be limited to three minutes per individual unless granted leave by the Chairperson to extend his or her remarks. The Chairperson, in his or her discretion, may limit or discontinue public commentary as may be needed to maintain order.

§ 6.02 The Commission shall urge the public, in the strongest possible terms, not to make complaints regarding possible McHenry County Ethics Ordinance violations at the public meetings since the public disclosure of such complaints may undermine any subsequent investigation which may be undertaken.

## **ARTICLE VII – MINUTES**

§ 7.01 The Commission shall keep written minutes of all its meetings. The minutes shall include:

- the date, time and place of the meeting;
- the members of the Commission recorded as either present or absent; and
- a summary of discussion on all matters proposed, deliberated, or decided and a record of any votes taken.

§ 7.02 The County Administration staff shall be responsible for keeping and preparing the minutes. The minutes of open meetings shall be made available for public inspection within seven days of the approval of such minutes by the Commission. Minutes of closed session will be reviewed semi-annually to determine whether they may be released to the public in accordance with the *Illinois Open Meetings Act*.

§ 7.03 The Commission's minutes will be approved by a majority vote of the Commission.

§ 7.04 A verbatim record will be made of any closed meeting in the form of an audio or video recording, pursuant to the *Illinois Open Meetings Act*. Such recording may be kept confidential and may be destroyed no sooner than 18 months after the completion of the recorded meeting.

## **ARTICLE VIII – VOTING**

§ 8.01 Any official action by the Commission shall require the affirmative vote of three (3) members of the Commission.

§ 8.02 Each member present at a Commission meeting shall vote on all matters put to a vote unless the member first requests recusal, or unless the member has a financial



interest or other conflict of interest which would prevent the member from participating in the matter.

§ 8.03 Voting by proxy is prohibited.

#### **ARTICLE IX – COMMUNICATIONS WITH THE COMMISSION**

§ 9.01 Electronic or surface mail directed to the McHenry County Ethics Commission shall be forwarded to the Deputy County Administrator as well as to the Commissioners.

§ 9.02 Freedom of Information Act requests for inspection or copying of public records pertaining to the Ethics Commission shall be forwarded to the Deputy County Administrator for response pursuant to the *Illinois Freedom of Information Act*, 5 ILCS 140, *et seq.* Records of the Commission shall be kept and maintained as required by the *Local Records Act*, 50 ILCS 205, *et seq.*

#### **ARTICLE X – COMPENSATION OF MEMBERS**

§ 10.01 Commissioners shall receive no compensation for their services, but each member may be reimbursed for expenses reasonably incurred in the performance of Commission duties in accordance with the McHenry County Travel and Business policy.

#### **ARTICLE XI – STANDARDS OF CONDUCT**

§ 11.01 Acceptance of the appointment to the McHenry County Ethics Commission constitutes a Commissioner's sworn responsibility to serve well and to faithfully discharge their duties and responsibilities diligently and consistent with all pertinent laws and McHenry County ordinances.

§ 11.02 In accepting appointment to the McHenry County Ethics Commission, members of the Commission shall maintain the highest standards of professional conduct. They shall support the mission, goals and objectives of the McHenry County Ethics Commission and strive to instill in the public a sense of confidence in the conduct of the Commission's business. In order to set the high standards of conduct and to assure the public's confidence in its government, the Commission commits itself to:

- (a) Encouraging and promoting government integrity by example;
- (b) Fairly and objectively enforcing the McHenry County Ethics Ordinance;
- (c) Assuring honesty in all matters that come before the Commission, both individually and collectively; and

- (d) Treating all staff, members of the public and colleagues with courtesy, respect, objectivity and fairness.

## ARTICLE XII – COMPLAINT PROCESSING AND ADJUDICATION PROCEDURES

### § 12.01 – Purpose

- (a) The purpose of this Article is to establish a uniform set of guidelines to be followed in connection with complaint processing and adjudication by the McHenry County Ethics Commission. A flowchart is attached hereto as Exhibit 1 to provide an illustrative guide to the complaint process.
- (b) The Commission was created for the purpose of providing the opportunity for members of the public and employees to bring alleged violations of the McHenry County Ethics Ordinance for independent review. Therefore, in the interest of furthering broad public participation consistent with orderly and expeditious processing and when warranted by good cause, the Commission may, in its sole discretion, deviate from the procedures set forth in this Article, or waive any of the following rules and procedures as circumstances warrant. Each party shall have the right to legal representation throughout the complaint process.

### § 12.02 – Consistency with Existing Law

- (a) This Article is to be interpreted consistent with the language set forth in the McHenry County Ethics Ordinance. In the event of a discrepancy between these procedures and the language of the Ethics Ordinance, the Ethics Ordinance shall govern.
- (b) This Article is also to be interpreted consistent with provisions of the *Illinois Administrative Procedures Act* concerning Administrative Hearings as set forth in the Illinois Compiled Statutes, 5 ILCS 100/10-5, *et seq.* In the event of a discrepancy between these procedures and the language of the *Administrative Procedures Act*, these procedures shall govern.

### § 12.03 – Disqualification of Ethics Commission Member

- (a) In accordance with Section 2.64.070.A.4 of the McHenry County Ethics Ordinance, the Administrative Services Committee, with the advice and consent of the County Board, may remove a commissioner from the Commission in case of incompetence, neglect of duty, or malfeasance in office.

- (b) Any member of the Ethics Commission is subject to disqualification in a particular proceeding for bias, prejudice, interest, or for any other reason for which a judge may be disqualified for cause in a court of law.
- (c) Any Party may request the disqualification of a member of the Ethics Commission in a particular proceeding by filing an Affidavit or Declaration under penalty of perjury. A request against a member of the Ethics Commission must be made prior to the commencement of the Sufficiency of Complaint and Probable Cause Examination. The Affidavit or Declaration must state with particularity the grounds upon which it is claimed that a fair and impartial review cannot be accorded. Where the request seeks to compel the disqualification of a member of the Commission, the disqualification shall be determined by a concurring vote of all other participating members of the Commission. The Commissioner who is the subject of the request for disqualification shall not participate in the vote but may participate in deliberations and discussions preceding the vote.
- (d) Notwithstanding paragraph 12.03.b, the Parties may choose to accept any member of the Ethics Commission if all Parties waive the grounds for disqualification raised by a Commissioner. The Waiver shall be included in the record of the hearing.

#### 12.04 - Filing Complaints

- (a) Complaints are to be filed with the Office of the Deputy County Administrator on a form prescribed. Upon receipt of the complaint, the Deputy County Administrator shall forward a copy of the complaint to the Chairperson of the McHenry County Ethics Commission. As authorized in Section 2.64.070.B(1)(d) of the McHenry County Ethics Ordinance, the Chairperson will determine if the complaint shall be dismissed sua sponte in accordance with the criteria articulated in Section 12.04(a)(1) below or if the complaint shall advance to the Ethics Commission to undergo the sufficiency of complaint and probable cause examination. If a complaint is to be dismissed sua sponte, then the Deputy County Administrator shall send a notice to the complainant citing specific reasons for the dismissal with a copy to the Ethics Commission and the Respondent. The Ethics Commission Chairperson may appoint an investigator/prosecutor pursuant to Section 2.64.070(B)(1)(i) of the Ethics Ordinance at any time during the complaint process.
  1. The Chairperson of the Commission may dismiss a complaint sua sponte at any time up to the Sufficiency of Complaint and Probable Cause Examination if the complaint does not set forth facts that when taken as true and liberally construed are sufficient to legally state a claim under this Ordinance; if the conduct involves a person not bound by this Ordinance; if the complaint is

deemed frivolous; or if the complaint is not written, signed, verified, and filed within one (1) year of the alleged violation.

- (b) If the complaint advances, the Deputy County Administrator shall send a copy of the complaint along with all supporting materials and documents to the respondent via certified mail to advise the respondent of the complaint and alleged violations. The Respondent shall have 21 calendar days from the date of the mailing to respond to the allegations or otherwise plead.
- (c) Within 7 days upon receipt of the respondent's response or after the expiration of time in which the response was due, the Ethics Commission Chairperson will schedule the date and time at which the sufficiency of complaint and probable cause examination shall occur and notification will be provided by certified mail to both the complainant and respondent. The notification shall provide sufficient notice to both parties that an administrative hearing on the allegations may commence immediately following the conclusion of the sufficiency of complaint and probable cause examination.

#### § 12.05 – Sufficiency of Complaint and Probable Cause Examination

- (a) The Ethics Commission will meet to determine the sufficiency of the Complaint and to reach a decision about whether Probable Cause exists to proceed.
- (b) The following documents shall be made a part of the record of the Sufficiency of Complaint and Probable Cause Examination: (1) the notice; (2) the Complaint; (3) Respondent's response, (4) any exhibits or documents appended to the Complaint and response; and (5) any waivers as to the disqualification of a member of the Ethics Commission. During its initial review, the Commission will determine, based on the materials provided, whether any further preliminary action is warranted. If so, the Commission will determine whether it should defer proceedings pending the completion of such preliminary activity.
- (c) Each party shall have an opportunity to address the Ethics Commission regarding the allegations and supporting documentation provided within the complaint and the respondent's response. No additional evidence or testimony beyond what is contained in the complaint or respondent's response shall be presented, considered or discussed.
- (d) (1) After the Sufficiency of Complaint and Probable Cause Examination, the Commission shall:

- i. Issue an order finding that the Complaint is insufficient to allege any violation of the McHenry County Ethics Ordinance or that no probable cause for the stated violation(s) exists; or
  - ii. Issue an order finding that the Complaint is sufficient to allege a violation of Section 2.64.030 of the McHenry County Ethics Ordinance (Prohibited Political Activity), probable cause exists and refer the Complaint and all relating documents to the McHenry County State's Attorney; or
  - iii. Issue an order finding that the Complaint is sufficient to allege a violation of Section 2.64.040 of the McHenry County Ethics Ordinance (Gift Ban), probable cause exists and refer the matter to the McHenry County State's Attorney; or
  - iv. Issue an order finding that the Complaint is sufficient to allege a violation or violations of Sections 2.64.040 (Gift Ban) or 2.64.050 (Prohibition on Sexual Harassment) of the McHenry County Ethics Ordinance, that probable cause exists for such a violation or violations and that the matter will proceed to an Administrative Hearing. Such order shall include the place, date and time of the Administrative Hearing which can occur immediately follow the sufficiency of complaint and probable cause examination.
- (2) The Commission shall send a copy of the Commission's Order to the Complainant and the Respondent within thirty (30) days after closing the Sufficiency of Complaint and Probable Cause Examination. If the matter proceeds immediately to the administrative hearing, the Commission's Order shall be made on the record with the written order to follow.
- (e) If the Commission finds that Probable Cause exists, the Commission shall prepare a Determination of Probable Cause summarizing the essential findings of the Commission and issue notices to the Complainant and Respondent, stating the Commission's Determination of Probable Cause. In addition, the Commission shall notify the McHenry County State's Attorney's Office to prosecute such actions and transmit the appropriate documentary materials in accordance with the Ordinance. If the matter proceeds immediately to the administrative hearing, the Commission's Determination of Probable Cause shall be made on the record with the notice and summary to follow.
- (f) The Ethics Commission Chairperson may appoint a hearing officer if and when he/she determines it to be necessary and practical to preside over the Administrative

Hearing process as provided by Section 2.64.070.B.1.i of the McHenry County Ethics Ordinance.

#### § 12.06 – Consent Agreements

- (a) At any time after the filing of a Complaint, in the discretion of the Commission and after consideration of such factors as the nature of the proceedings and the requirements of the public interest, a Consent Agreement may be entered into between the Commission and the Respondent, if such an agreement will result in a just disposition of the issues involved.
- (b) Any Consent Agreement containing consent findings and an Order disposing of a proceeding or any part thereof shall also provide that:
  - (1) the Order shall have the same force and effect as an Order made after a full hearing;
  - (2) the entire record on which any Order may be based shall consist solely of the Complaint and the Consent Agreement;
  - (3) further procedural steps before the Commission are waived;
  - (4) any right to challenge or contest the validity of the Order and decision entered in accordance with the Consent Agreement is waived; and
  - (5) the Order and Decision of the Commission is final.

#### § 12.07 – Pre-Hearing Conference

- (a) If both parties agree to participate, the Ethics Commission Chairperson may conduct a Pre-Hearing Conference prior to the Administrative Hearing. The Ethics Commission Chairperson shall set the time and place for the Pre-Hearing Conference and shall give reasonable written notice to all Parties.
- (b) A Pre-Hearing conference may be held for the purpose of facilitating the orderly completion of the hearing. Thus, a Pre-Hearing Conference may deal with one or more of the following matters:
  - (1) Preparation of stipulations;
  - (2) Clarification of issues;
  - (3) Rulings on identity and limitation of the number of witnesses;
  - (4) Objections to proposed evidence;
  - (5) Order of presentation of evidence and cross-examination;

- (6) Rulings regarding issuance of Subpoenas;
  - (7) Time limits for the completion and exchange of discovery prior to an Administrative Hearing;
  - (8) Schedules for the commencement and conduct of a hearing;
  - (9) Exchange of witness lists and of exhibits or documents to be offered in evidence at a hearing;
  - (10) The disqualification of any person from participating in the hearing;
  - (11) Any other matters that may promote the orderly and prompt conduct of the hearing.
- (c) The Ethics Commission Chairperson may conduct all or part of the Pre-Hearing Conference by telephone, videoconferencing, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.
- (d) The Ethics Commission Chairperson shall issue a Pre-Hearing Order incorporating the matters determined at the Pre-Hearing Conference. The Ethics Commission Chairperson may direct one or more of the Parties to prepare the Pre-Hearing Order.

#### § 12.08 – Continuances

- (a) The Ethics Commission may continue the Sufficiency of Complaint and Probable Cause Examination or the Administrative Hearing for good cause shown by one of the Parties to the hearing or upon request by any member of the Ethics Commission.

#### § 12.09 – Discovery

- (a) Prior to the date of the Pre-Hearing Exchange of Information as provided for in Section 12.10, any Respondent may request from any other Party to the hearing:
- 1) the names and addresses of witnesses to the extent known to the other Party, including, but not limited to, those intended to be called to testify at the hearing; and
  - 2) an opportunity to inspect and make a copy of any of the following in the possession or custody or under the control of any other Party to the hearing:
    - i. A statement pertaining to the subject matter of the proceeding made by any Party to another Party or person;
    - ii. Statements of witnesses then proposed to be called to testify at the hearing and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (i) above; and/or

- iii. All writings that any other Party then proposes to offer in evidence.
- (b) In the event that a material witness is unavailable to testify at the hearing, any Party may petition the Ethics Commission for an order that the testimony of that material witness be taken by deposition in the manner prescribed by law for depositions in civil actions under Rule 217 of the Rules of the Illinois Supreme Court. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The Complainant shall serve notice of the deposition and a copy of the petition on the other Parties at least three business days before the deposition.
- (c) Requests for discovery must be made in writing. While no particular form must be used, the request must clearly and plainly state the information or items sought. Requests for discovery must be provided to the Party from whom the discovery is sought either by personal delivery or by certified mail, return-receipt requested.
- (d) Concurrent with the service responsibilities set forth under Section 12.09, the Party seeking discovery shall ensure that all other parties to the hearing are provided with a copy of the request for discovery.
- (e) The Party responding to the discovery request shall respond within 10 calendar days, and shall ensure that all other Parties to the hearing are provided with a copy of all documents that are produced. The Party requesting documents shall be liable to reimburse the Party producing the documents for the reasonable photocopying expenses incurred by the producing Party.
- (f) If a Respondent claims that a responding Party has failed to comply with a request for discovery pursuant to this Section, the Respondent may request a Pre-Hearing conference in accordance with Section 12.07 for the purpose of seeking to compel discovery.
- (g) Nothing in this Article shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

#### § 12.10 – Prehearing Exchange of Information

No later than seven calendar days prior to the Administrative Hearing, all Parties to the hearing shall mail or deliver to all other Parties a list of all witnesses and a copy



of all exhibits or documents that the Party anticipates offering into evidence at the hearing.

#### § 12.11 – Venue and Hearing

- (a) To the extent possible, a Commission Administrative Hearing or a Sufficiency of Complaint and Probable Cause Examination shall be held at the County Administration Building. In the event the County Administration building is not accessible or available, then County Administration shall secure a suitable alternative venue which shall be a public building in McHenry County.
- (b) Sufficiency of Complaint and Probable Cause Examinations may be closed to the public under the applicable Section of the *Illinois Open Meetings Act*, 5 ILCS 120/2(c)(1) and (4), unless all Parties request in writing that the hearing be open to the public and the Commission concurs. Deliberations by the Commission following receipt of evidence may be closed if such closure is in accordance with the *Illinois Open Meetings Act*.
- (c) Administrative Hearings may be closed to the public under the applicable Section of the *Illinois Open Meetings Act*, 5 ILCS 120/2(c)(1) and (4), unless all Parties request in writing that the hearing be open to the public and the Commission concurs. Deliberations by the Commission following receipt of evidence may be closed if such closure is in accordance with the *Illinois Open Meetings Act*.
- (d) Alternatively, the Commission may elect to refer to the McHenry County State’s Attorney a possible violation of Section 2.64.040 of the Ordinance (Gift Ban) for prosecution in the courts of the Twenty-Second Judicial Circuit.
- (e) Prosecution of an alleged violation of Section 2.64.030 of the Ordinance (Prohibited Political Activities) will be promptly referred to the McHenry County State’s Attorney for prosecution.

#### § 12.12 – Counsel

- (a) Each Party has the right to attend the hearing and may be represented by legal counsel or any other representative of his or her choosing.

#### § 12.13 – Chronology of the Administrative Hearing

The chronology contained in this Article provides the basic order of proceedings during the Administrative Hearing. The Ethics Commission, at its discretion, may modify this chronology in the interest of conducting an efficient and expedient hearing, unless such modification prevents due process from being afforded to all parties to the Hearing.

- (a) The Ethics Commission calls the matter for hearing and asks the Parties and any counsel present to identify themselves. The Ethics Commission takes official notice of any official positions or offices within the County of McHenry, which are held by any of the Parties. Unless the commission appoints a Hearing Officer, the Commission Chairperson will preside at the Administrative Hearing.
- (b) The following documents shall be made a part of the Administrative Hearing record: (1) the notice of hearing; (2) the Complaint; (3) Respondent's response, (4) the Probable Cause determination and findings; and (5) any waivers as to the disqualification of a member of the Ethics Commission.
- (c) Any Party may make an opening statement. If the Complainant and Respondent both wish to make an opening statement, the Complainant proceeds first. The Respondent may reply after the Complainant's opening statement or may reserve an opening statement until after the Complainant concludes his or her case.
- (d) The Complainant puts on his or her case first.
- (e) The Respondent puts on his or her case after the Complainant concludes. If there is more than one Respondent, the order of presentation may be decided by mutual agreement of the Respondents or, if necessary, by the Ethics Commission.
- (f) After the initial presentation of evidence by both sides, the Parties, beginning with the Complainant, may introduce evidence in rebuttal. Such evidence should be limited to matters already raised in the presentation of the Complainant's or Respondent's case.
- (g) Each Party may make a closing argument. The Complainant proceeds first. The Respondent proceeds after the Complainant's closing argument. The Complainant may conclude the closing arguments with a rebuttal.
- (h) These procedures do not authorize the making of a motion for dismissal or a motion for nonsuit or directed findings at any time during the hearing.

#### § 12.14 – Evidence

- (a) Oral evidence shall be taken only under oath. The oath may be administered by the Ethics Commission Chairperson or the Hearing Officer. The oath is obtained by an affirmative response to the following statement: "Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this matter shall be the truth, the whole truth, and nothing but the truth?"
- (b) Each Party shall have these rights:
  - 1) To call and examine witnesses;

- 2) To introduce exhibits;
  - 3) To cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
  - 4) To impeach any witness regardless of which Party first called him or her to testify;
  - 5) To object for sound reasons to the evidence presented by an adverse Party.
- (c) A Party may redirect and recross, subject only to the limitations imposed by the Ethics Commission.
  - (d) The Complainant may call and examine any Respondent as if under cross-examination even if that Respondent does not first testify in his or her own behalf.
  - (e) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Rulings on the admission of evidence will be made by the Chairperson or the Hearing Officer or the member presiding.
  - (f) At an Administrative Hearing, hearsay evidence may be used for the purpose of supplementing or explaining other evidence; however, upon timely objection, hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case.
  - (g) The Ethics Commission has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

#### § 12.15 – Ex Parte Communications

- (a) Except as otherwise provided in this Section, while the proceeding is pending, the members of the Ethics Commission shall not participate in any communications with any Party, representative of a Party, or any person who has a direct or indirect interest in the outcome of the proceeding about the subject matter or merits of the case at issue, without notice and opportunity of all Parties, to participate in communication.
- (b) No pleading, letter, document, or other writing shall be filed by a Party unless a copy thereof together with any exhibit or attachment is provided to all other Parties to the proceeding.

- (c) Communications prohibited under Section 12.15(a) do not include communications concerning matters of procedure or practice, including request for continuances that are not in controversy. It also does not prohibit communications between a Party and the Ethics Commission when the opposing Party has had a default entered pursuant to Section 12.16.
- (d) If, while the proceeding is pending, an Ethics Commissioner received a communication of a type that would be in violation of this Article, he or she shall promptly disclose the content of the communication on the record and give all Parties an opportunity to address it.

#### § 12.16 – Default

- (a) In the event a Respondent fails to appear at an Administrative Hearing, the Ethics Commission may direct that the scope of the hearing be narrowed. At its discretion, the Ethics Commission may conduct the Hearing notwithstanding the absence of the Respondent or, in the alternative, dispense with the Hearing and take under submission Respondent's express written admissions, stipulations entered into between the Parties, and any other written evidence submitted by a Party who was present at the Administrative Hearing.
- (b) In the event of the Respondent's default, and within seven business days after a decision by the Commission that either (1) there is probable cause to believe that the Respondent has committed a violation of the McHenry County Ethics Ordinance, or (2) the Respondent has committed a violation of the McHenry County Ethics Ordinance, the Respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The Commission, in its discretion, may vacate the decision and grant a re-hearing on a showing of good cause. As used in this Section, good cause includes, but is not limited to, any of the following:
  - 1) Failure of the Person to receive notice of the hearing; or
  - 2) Mistake, inadvertence, surprise, or excusable neglect.

#### § 12.17 – Findings and Decision

- (a) Following the receipt of evidence and the conclusion of the Examination or Hearing, the members of the Commission may convene in closed session for deliberations and a decision on the matters presented and any further or related rulings as appropriate. The Commission will render its decision within 30 calendar days of the conclusion of the Administrative Hearing.

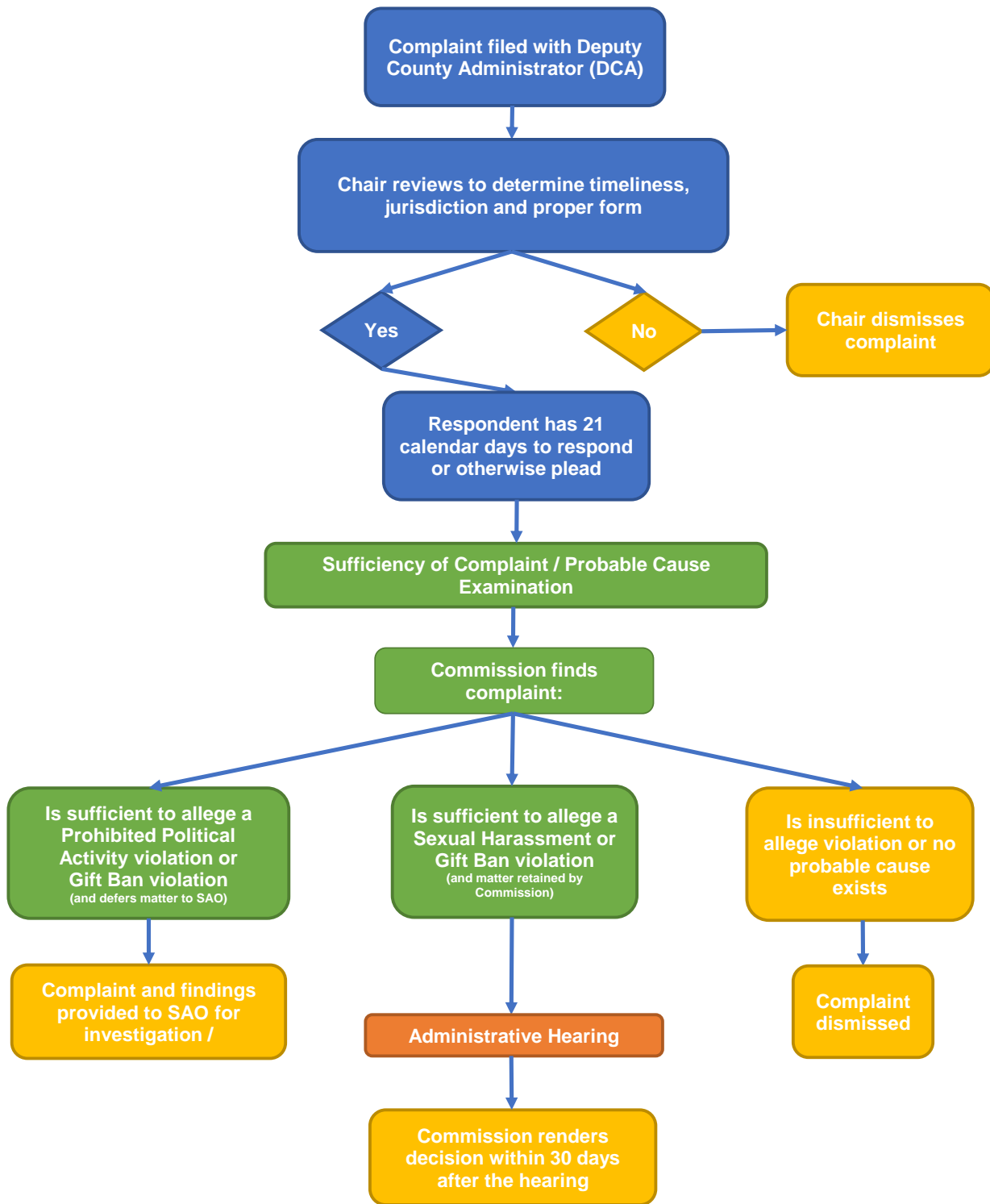
#### § 12.18 – Judicial Review

- (a) Judicial review may be had by filing a complaint for administrative review in accordance with the provisions of the *Illinois Code of Civil Procedure*, 735 ILCS 5/3-101, *et. seq.*
- (b) The 35 day statute of limitations contained in the *Illinois Code of Civil Procedure*, 735 ILCS 5/3-103 shall apply to judicial review of enforcement decisions made by the Commission.

§ 12.19 – Enforcement of Fines and Penalties

- (a) Fines and penalties levied by the McHenry County Ethics Commission pursuant to Section 2.64.080.C.1 of the McHenry County Ethics Ordinance shall be considered a matter of ordinance. Failure to pay fines and fees levied shall constitute an ordinance violation and shall be pursued and prosecuted as an ordinance violation in the 22<sup>nd</sup> Judicial Circuit Court.

# McHenry County Ethics Ordinance Complaint Processing and Adjudication Procedures



Legend

Complaint filing / initial processing

Sufficiency of Complaint / probable cause examination

Administrative Hearing

Complaint resolution / termination