

Muncie Ethics Commission

Public Hearing Procedures

Purpose

To establish a process for conducting public hearings as set forth in Title IV, Chapter 42 of the City of Muncie Code of Ordinances entitled “Code of Ethics.”

I. Reasonable Time

In computing any period of time prescribed or allowed by these rules, the provisions of Title I, Chapter 10, Section 10.12 shall be used.

II. Notice of Hearing

A. Content of Notice

Within 10 days of the Commission’s decision to schedule a public hearing under the provisions of Section 42.01(D)(7) of the Code of Ethics, the Commission shall forward to the respondent a copy of the decision and notice of the date, time, and place of the hearing. The date of the hearing shall not be less than 30 days after the notice of the hearing.

The notice shall:

- identify which section or sections of the Code of Ethics the respondent is alleged to have violated,
- advise the respondent of his or her rights as listed in paragraph D. below.
- advise the respondent that his or her failure to appear may result in the Commission acting on the complaint as undisputed according to Section 42.01(D)(3) of the Code of Ethics, and
- provide the respondent a proposed settlement agreement and offer conciliation as described in Section III of these procedures.

B. Delivery of Notice

The notice will be provided to the respondent via a means that provides confirmation of delivery.

C. Extension of Time

Upon request properly filed, the chair (or the presiding officer if one has been appointed) may extend the date on which the hearing has been set for good cause shown.

D. Respondent’s Rights

The respondent shall have all rights specified in Section 42.01(F) of the Code of Ethics:

1. The respondent may, if they so desire, be represented by an attorney of their own choosing, at their own expense.
2. The Commission will provide the respondent with copies of all evidence in its possession. In addition, the respondent shall have the right to conduct discovery.
3. The respondent shall have the right to call witnesses, cross-examine witnesses, and introduce exhibits.
4. The respondent may testify on their own behalf if they so desire but shall not be required to testify. However, if the respondent decides to testify, they may be questioned in the same manner as any other witness.

III. Conciliation

A. Statement of Policy

It is in the public interest to settle complaints without the necessity of a public hearing by means of an agreed settlement as permitted by Section 42.02(D) of the Code of Ethics, provided the settlement upholds the public policy of the City as reflected in the Code of Ethics.

B. Assignment of Conciliation Team

At the meeting at which the Commission decides to schedule a public hearing, the chair shall appoint two (2) members of the Commission to conduct the conciliation process.

C. Proposed Settlement Agreement

The conciliation team shall draft a proposed settlement agreement.

D. Notice of Proposed Settlement to Respondent

Along with the notice of hearing provided under Section II of this procedure, the Respondent shall also be provided:

1. The proposed settlement agreement
2. Notice that the respondent must choose one of the following three options:
 - a. Sign the settlement agreement and thus terminate the proceeding, subject to:
 - i. Approval, if applicable, of the individual in charge of the department in which the respondent is employed or the Mayor and
 - ii. Approval of a majority of the Commission.

- b. Request in writing and within seven (7) days of receipt of the proposed settlement agreement, a conciliation conference to be scheduled to negotiate differences regarding provisions in the settlement agreement.
 - c. Reject in writing the Commission's efforts at conciliation within seven (7) days after receipt of the proposed agreement, at which time the Commission shall consider its obligation to make a reasonable effort to conciliate the complaint at an end and proceed with the public hearing.
3. If the respondent fails to respond by the deadline, the conciliation team will make a reasonable effort to contact the respondent and attempt to clarify which of the three options described above the respondent has chosen. If such efforts are unsuccessful, the conciliation team shall consider their efforts to make a reasonable effort to conciliate all the issues in the complaint at an end, and the Commission shall proceed to conduct the public hearing.

E. Conduct of Conciliation Conference

1. At the conciliation conference, the conciliation team shall attempt to negotiate all differences regarding provisions in the consent agreement.
2. The respondent may represent themselves or be represented by their attorney. All discussion in conciliation conferences shall be confidential.
3. If applicable, the individual in charge of the department in which the respondent is employed or the Mayor shall attend and participate in the conference.
4. No admissions made against interest during the conciliation conference may be introduced as evidence at a public hearing held by the Commission or at any other legal proceeding, unless waived by written consent of the respondent.

F. Unsuccessful Conciliation

If the respondent does not agree to the terms of a settlement agreement, either within seven (7) days of receipt of the settlement agreement or at a conciliation conference, the complaint shall proceed in accordance with these rules toward the holding of a public hearing on the complaint.

G. Successful Conciliation

If the terms which are reached at the conciliation conference are approved by the respondent and the consent agreement is signed by the respondent and, if applicable, by the individual in charge of the department in which the respondent is employed or the Mayor, then the agreement shall become effective when approved by the Commission.

H. Approval by the Commission

1. The Commission shall place the settlement agreement resulting from a successful conciliation on the agenda of its next scheduled regular meeting, subject to notice requirements under state law.
2. If, upon a majority vote, the Commission approves the agreement the Commission members voting in favor shall sign the agreement.
3. If the agreement is not approved by a majority of the Commission, it shall be of no effect and the Commission shall proceed with the scheduled public hearing on the complaint.

IV. Presiding Officer

The Chair of the Commission or another member of the Commission designated by the Chair shall serve as the Presiding Officer.

V. Representation of the Commission

A. City Attorney to Represent Commission

The City Attorney shall represent the Commission and prosecute the charge of violation, unless doing so would present a conflict of interest.

B. Conflict of Interest

If representing the Commission shall present a conflict of interest for the City Attorney, then the Legal Counsel for the Common Council shall represent the Commission or the Commission may retain outside counsel. In the case of conflict, any reference to "City Attorney" in these procedures shall be interpreted to mean the counsel representing the Commission with respect to a particular complaint.

VI. Discovery

Whenever a public hearing before the Commission is set as provided by these rules, parties shall be entitled to conduct discovery by means of written interrogatories and production of documents, electronically stored information, or things under provisions of Rules 26, 33, 34, and 37 of the Indiana Rules of Trial Procedure.

VII. Pre-Hearing Conference

A. Simplification and Stipulations

In any hearing before the Commission, the presiding officer in his or her discretion, or upon motion of any party, may direct the parties or their attorneys to appear before him/her for a pre-hearing conference to consider:

1. the simplification of the issues;

2. the necessity or desirability of amendments to the pleadings;
3. the possibility of obtaining admissions of fact and/or of documents which will avoid unnecessary proof;
4. a limitation of the number of expert witnesses;
5. an exchange of names of witnesses to be called during the trial and the general nature of their expected testimony; or
6. such other matters as may aid in the disposition of the action.

B. When Called

Unless otherwise ordered by the Commission, the pre-hearing conference shall not be called until after conciliation has been attempted and has failed.

C. Participants

At least one attorney planning to take part in the hearing shall appear for each of the parties and participate in the pre-hearing conference. However, when a respondent chooses to represent himself/herself before the Commission at a public hearing, he or she may appear at the pre-hearing conference without counsel.

D. Conference of Attorneys

Unless otherwise ordered by the presiding officer, attorneys for each of the parties (or, if the party is not represented by counsel, the party himself/herself) shall meet and confer at least three (3) days prior to the pre-hearing conference, for the following purposes:

1. Each attorney shall mark for identification and provide opposing counsel an opportunity to inspect and copy all exhibits which he or she expects to introduce at the hearing. Numbers or marks placed on such exhibits at the pre-hearing conference will be stricken when such exhibits are introduced at the hearing. The exhibits also must indicate the party identifying the exhibits. Exhibits of such nature as to prohibit or make impracticable their production at the conference shall be identified and notice shall be given of their intended use. Necessary arrangements must be made to afford opposing counsel an opportunity to examine such exhibits.
2. The Commission adopts Rule 16(C) 2-5, inclusive, of the Indiana Rules of Trial Procedure, substituting "presiding officer" for "court" and substituting "hearing" for "trial." These rules discuss orders for simplifying the issues, amending the pleadings, obtaining admissions of facts and documents, limiting expert witnesses, and other areas necessary to facilitate a hearing.

E. Attorney Preparation

The Commission adopts Rule 16(D) of the Indiana Rules of Trial Procedure, which provides that attorneys must be familiar with the case before the pre-hearing conference and prepared to enter into as many stipulations as possible.

F. Duty to Arrange Conference

It shall be the duty of the City Attorney and counsel for the respondent to arrange for the conference of attorneys at least ten (10) days in advance of the pre-hearing conference unless waived by the presiding officer.

G. Witnesses or Exhibits Discovered Subsequent to the Conference of Attorneys and Prior to a Pre-Hearing Conference

The Commission adopts Rule 16(0) of the Indiana Rules of Trial Procedure, substituting "hearing" for "trial" and substituting "presiding officer" for "court." Rule 16 (G) requires that attorneys disclose witnesses or exhibits discovered after the attorney conference to opposing counsel immediately.

H. Witness or Exhibits Discovered Subsequent to Pre-Hearing Conference

The Commission adopts Rule 16(I) of the Indiana Rules of Trial Procedure, substituting "hearing" for "trial" and substituting "commission" for "court." Rule 16(I) requires that attorneys disclose witnesses or exhibits discovered after the pre-hearing conference or during the hearing to opposing counsel immediately.

I. Additional Pre-Hearing Conferences

If necessary or advisable, the presiding officer may adjourn the pre-hearing conference from time to time or may order an additional pre-hearing conference.

J. Pre-Hearing Statement

The presiding officer shall make a written report which summarizes the action taken at the pre-hearing conference and the amendments made by the parties as to any of the matters considered which limit the issues before the full Commission to those not disposed of by admission or agreement at the pre-hearing conference. Objections to the pre-hearing statement shall be noted on the record for appeal purposes.

VIII. Public Hearings

A. Evidence

No evidence shall be received at any hearing except upon reasonable opportunity for all parties to be present in person or by counsel.

B. Conduct of a Hearing

1. The Commission shall conduct its hearings in an informal manner without recourse to the technical common law rules of evidence required in proceedings in judicial courts, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative or judicial review of all questions of fact if substantial, reliable and probative evidence supports the Commission's determination. The presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence and shall consider only evidence introduced into the record.
2. The attorney prosecuting the complaint shall first present the evidence in support of the complaint, after which the respondent or respondent's counsel shall present their evidence. Thereafter, there shall be opportunity for rebuttal and surrebuttal. Cross-examination of witnesses shall be permitted.
3. Commission members shall have the right to question any witness.

C. Duties of the Presiding Officer

1. The commissioner presiding at the hearing shall have the power to administer oaths and affirmations, rule on offers of proof and receive relevant oral or documentary evidence and dispose of procedural motions and similar matters.
2. The presiding officer shall order the separation of witnesses.
3. The presiding officer may exclude from the hearing room or from further participation in the proceeding, any person who engages in improper conduct before him/her except a party, his or her attorney, or a witness engaged in testifying. If a party, a party's attorney or a testifying witness engages in improper action, the presiding officer may take appropriate action as justice requires. Improper conduct shall consist of action which severely impedes or makes impossible an orderly administrative adjudication.

D. Continuance

1. For good cause shown, the presiding officer may in his/her discretion grant a continuance on the motion of City Attorney or the respondent. If a continuance is granted, costs incurred on account of the continuance may be assessed against the party moving for the continuance, at the discretion of the presiding officer.
2. The presiding officer may at any time order a continuance upon his/her own motion if the interests of justice so require. When all parties are present, such oral notice shall constitute final notice of such continued hearing.

IX. Notices and Motions

A. Notices

1. Notices of the filing of any written order, agreement, or other instrument shall be accompanied by a copy thereof.
2. If a respondent or other party is represented by an attorney, then any notice which is required to be given or may be given to the party shall be provided to the party's attorney with a copy sent to the party.
3. Every notice provided by the Commission under these procedures shall be in writing, and shall be given at least five (5) calendar days prior to the event of which notice is given, unless a longer or shorter period of time is specifically prescribed in these procedures.

B. Delivery of Notices

1. Any notice may be provided by the same means used to deliver the original notice of hearing, as described in Section II.B. of these procedures.
2. Notices provided to a party's attorney may be delivered in person.
3. When notices are provided to a party's attorney, the copy provided to the party may be delivered by regular first class mail.

C. Motions

1. Requests to the Commission to take any action or to enter any order after the scheduling of the public hearing shall be by motion which, unless made during a hearing, shall be made in writing, shall state specifically the grounds therefore and shall set forth the action or order being sought.
2. The Commission may request that any motion be reduced to writing.
3. Each motion made in writing, or reduced to writing at the Commission's request, shall be filed with the Commission at the City Clerk's office.

X. Undisputed Complaints

If the respondent fails to appear for a public hearing after proper notice, the Commission at a subsequent public meeting may act on the alleged violations as undisputed and upon a majority vote may issue recommendations for corrective action as permitted by section 42.01(D)(3) of the Code of Ethics.

XI. Post-Hearing Procedure

A. Proposed Findings of Fact and Conclusions of Law


At the close of the public hearing the presiding officer shall request the parties to submit proposed findings of fact and conclusions of law to the Commission, which shall include suggested findings and conclusions, and suggest

recommendations for corrective action and/or referral to Corporation Counsel which the party believes is appropriate.

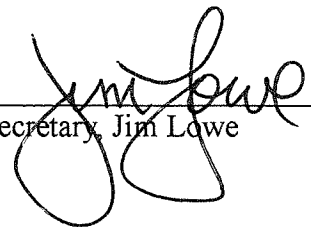
B. Decision by the Commission

1. Within 45 days of the close of the hearing, the Commission shall place the complaint on the agenda of a public meeting for the purposes of making a decision according to Section 42.02 of the Code of Ethics.
2. The Commission shall consider each violation alleged in the notice of public hearing separately.
 - a. Before making any decision regarding its report of findings, conclusions and recommendations the Commission shall first determine, by majority vote, that the respondent committed the violation.
 - b. If any member of the Commission wishes to make a motion that the respondent did not commit the violation, that motion shall be considered first. Such motion shall include the reasoning which would justify dismissal of the violation.
3. If the Commission determines, by majority vote(s), by a preponderance of the evidence, that the respondent has committed one or more of the violations alleged in the notice of public hearing, it shall adopt, by a majority vote, a report of its findings, conclusions, and recommendations for corrective action and/or referral to Corporation Counsel for enforcement proceedings as described in Section 42.02(B) of the Code of Ethics.
4. If the Commission determines, by majority vote(s), that the respondent has not committed any of the violations alleged in the notice of public hearing, then the Commission shall dismiss the complaint and state in writing its reasons for the dismissal as described in Section 42.02(A) of the Code of Ethics.
5. If a majority of the Commission is unable to determine whether a violation of the Code of Ethics has occurred, the complaint shall be dismissed as described in Section 42.02(C) of the Code of Ethics

Approved this 9TH day of APRIL, 2025



Chair, Charles Taylor



Secretary, Jim Lowe