

MONTGOMERY COUNTY
ETHICS COMMITTEE



**COMPLAINT RULES AND
PROCEDURES**

Adopted: April 21, 2017
Effective: April 21, 2017

I. PREAMBLE

A suspected violation of the Montgomery County Code of Ethics (the “Ethics Code”) may be reported to the Montgomery County Ethics Committee (the “Ethics Committee”) by submitting a sworn complaint. After a preliminary review of the complaint, the Ethics Committee may investigate the alleged violation and ultimately make a recommendation of action to the Montgomery County Commissioners Court (“Commissioners Court”). These rules and procedures govern the process to initiate and resolve complaints submitted to the Ethics Committee.

II. GENERAL RULES

1. The failure of the County or any employee of the county to abide by the time requirements in these rules and procedures does not constitute a violation of these rules that would entitle the complainant or anyone else to any right of action.
2. Individuals who are involved with the complaint and investigation process will not disclose details about the complaint or investigation to anyone unless required to do so by law or these rules.

III. DEFINITIONS

The terms used herein shall have the same meanings as defined in the Ethics Code. Additionally, the following terms and definitions apply to these procedures:

1. “Complainant” means the person or persons filing a complaint alleging a violation of the Ethics Code.
2. “Complaint” means an original complaint, amended complaint or supplemental complaint that has been found to state a violation of the Ethics Code when required by the context.
3. “County Attorney” means the Office of the County Attorney, its assistant county attorneys in their official capacity and designees.
4. “Respondent” means the County Public Servant(s) against whom the complaint is made.

IV. SUBMISSION OF COMPLAINT

Upon a good faith belief that the Ethics Code has been violated, a qualified individual may submit a complaint to the County Attorney in the form provided by the Human Resources Department that will be available online. A complaint that does not comply with the requirements set forth in these rules and procedures is subject to dismissal.

A. Who May Submit a Complaint

Any individual 18 years of age or older who has a good faith belief based on personal knowledge that a violation of the Ethics Code has occurred may submit a complaint.

B. Complaint Form and Minimum Requirements

The following minimum requirements apply to a complaint:

- 1) The complaint must be sworn and notarized;
- 2) The complaint must be based on personal knowledge of the complainant;
- 3) The complaint must specifically identify the section(s) of Ethics Code that has been violated;
- 4) The complaint must allege facts, and not conclusory statements, that support the claim that the Ethics Code has been violated;
- 5) The complaint must identify the individual who has allegedly violated the Ethics Code;
- 6) The complaint must identify the date(s) or approximate time period of the alleged violation;
- 7) The complaint must be in the form adopted by the Human Resources Department;
- 8) The complaint must include copies of or identify any documentary or other evidence supporting the complaint; and
- 9) The complaint must provide any other information required on the complaint form.

C. Submission Date

A complaint must be submitted within 60 days of the date the alleged violation is discovered. The date the County Attorney receives a complaint is the date of submission.

V. PRELIMINARY REVIEW PROCESS

A. Complaint Must State a Violation

A complaint must state a violation by satisfying the minimum requirements set forth in these rules and procedures in order to be considered by the Ethics Committee. The County Attorney will review the complaint and any accompanying materials to determine if the complaint states a violation. The County Attorney will notify the complainant in writing within ten (10) business days after receipt of the complaint as to whether or not the complaint states a violation of the Ethics Code.

B. Complaint That States a Violation

1. If the complaint states a violation of the Ethics Code, the notice to a complainant will state that the complaint will be forwarded to the Ethics Committee for further review and/or investigation.

2. Within three (3) business days after sending notice to the complainant that the complaint states a violation, the County Attorney will submit the complaint and all other accompanying material to the Ethics Committee.

C. Complaint That Fails to State a Violation

1. If the complaint fails to state a violation of the Ethics Code, the notice to a complainant will identify the defects in the complaint and indicate that the complaint will be dismissed if the defects are not cured within fourteen (14) calendar days of the date of the notice.

2. The County Attorney acting on behalf of the Ethics Committee will dismiss a complaint that fails to state a violation and is not cured within the time provided in the notice to the complainant or as required by these rules.

D. Curing Defects in Complaint

1. A complainant may cure any defects in his original complaint by submitting an amended complaint to the County Attorney within fourteen (14) calendar days. The amended complaint must be accompanied by a cover letter explaining that the complaint has been amended to cure the defects in the original complaint.

2. The County Attorney will notify the complainant within seven (7) business days whether or not the amended complainant states a violation of the Ethics Code.

(a) If the amended complaint states a violation of the Ethics Code, the notice to the complainant will state that the amended complaint will be forwarded to the Ethics Committee for further review and/or investigation. The County Attorney shall submit the amended complaint and all other material to the Ethics Committee in conformity with Section V.B. of these rules.

(b) If the amended complaint fails to state a violation of the Ethics Code, the notice to the complainant will state that the amended complaint is dismissed and that the amended complaint may not be resubmitted except pursuant to Section V.E of these procedures.

E. Dismissed Complaint

A complaint that has been dismissed cannot be resubmitted unless it is based on new factual information that was not known by the complainant at the time of the original complaint.

F. Supplement to Complaint

A complainant may supplement his complaint that has been determined to state a violation of the Ethics Code with any new and relevant information that pertains to the alleged ethics violation and not provided with the original or amended complaint. A supplemental complaint shall be

submitted in the same manner and on the same form as an original complaint.

VI. ETHICS COMMITTEE REVIEW PROCESS

A. Notice of Complaint to Respondent

Upon receipt of a complaint from the County Attorney, the chairperson of the Ethics Committee will send written notice to the respondent(s) within seven business days that:

1. a complaint alleging a violation of the Ethics Code has been submitted to the Ethics Committee; and
2. the respondent has fourteen (14) calendar days to respond to the complaint with any of the following:
 - a. an admission of the allegations in the complaint;
 - b. denial of the allegations and a sworn statement; or
 - c. an agreement, without an admission or denial, to cease and desist any conduct in violation of the Ethics Code and assure future compliance.

The notice will include a copy of the complaint.

B. Sworn Response

1. After receiving notice of a complaint alleging a violation of the Ethics Code, the respondent(s) may submit a denial and response to the Ethics Committee within the time required by these rules. The response accompanying a denial should include the following: a) a detailed response to the allegations, including all information the respondent believes supports respondent's response and denial; b) names and contact information of witnesses or persons with relevant information; and c) all relevant documents or other evidence.
2. The respondent's response must be made under oath and executed before a notary.
3. A response that is not sworn, not notarized or not timely submitted may be disregarded by the Ethics Committee.
4. A response may be supplemented with additional information at any time. Any testimonial information must be made under oath and executed before a notary.

C. Supplemented Complaint

If a supplement to a complaint contains new allegations, the Ethics Committee will within seven business days send notice to the respondent(s) of the supplement. The notice will include a copy of the supplement and inform the respondent(s) that he may submit a supplemental response to the Ethics Committee within fourteen (14) calendar days.

D. Investigation

1. **Time to Investigate and Make a Determination.** After receiving a response from the respondent(s) to the notice of a complaint, the Ethics Committee will investigate the allegations and determine within ninety calendar days if the Ethics Code has been violated. The Ethics Committee may for good cause extend the time needed to make its determination by providing notice to the County Attorney. Good cause shall exist if a supplemental complaint is received.

2. **Investigation Process.** The Ethics Committee must make a good faith effort to fully investigate the complaint or amended complaint. The Ethics Committee may in its discretion conduct any meetings or take any other actions permitted by these rules to aid its determination of whether a violation of the Ethics Code has been committed or has occurred. The Ethics Committee may investigate as a committee of the whole or may appoint one or more members of the Committee to conduct an initial investigation.

To aid its investigation, the Ethics Committee or any of its members may: a) interview witnesses or potential witnesses; b) interview the complainant and/or the respondent; c) request documents or other information; and/or d) seek advice or guidance from the County Attorney. The Ethics Committee may conduct its investigation at any time, including during county business hours.

3. **Report of Initial Investigation.** The member or members who investigated the complaint will report to the entire Ethics Committee upon conclusion of the investigation if an initial investigation is made by less than the entire committee. The initial investigation report should include, at a minimum, the following:

- (a) The steps taken in the initial investigation;
- (b) The specific provisions of the Ethics Code applicable to the complaint;
- (c) The identity of any witnesses interviewed or from whom statements were received;
- (d) All written witness statements;
- (e) A description of any relevant documents and summaries or copies of such documents; and
- (f) A recommendation as to factual findings to be made by the Ethics Committee.

4. **Determination of Complaint.** After concluding its investigation or after receipt of the initial investigation report, the Ethics Committee will decide whether the respondent has violated the Ethics Code or a violation of the Ethics Code has occurred. The Ethics Committee may make further investigation and/or inquiry as it determines in its sole discretion prior to making its determination. The Committee may request the complainant, the respondent and/or any witness to appear before the Committee, but the Committee will not have the ability to subpoena witnesses or documents. Upon request of the respondent, the Committee will provide the respondent with the opportunity to appear before the Committee prior to the Committee reaching any decision and/or prior to the Committee issuing any recommendation.

The Ethics Committee shall make a finding as to whether or not the respondent breached the Ethics Code. A finding by the Ethics Committee that the respondent breached the Ethics Code must be unanimous and made by the Ethics Committee meeting with at least four (4) members in

attendance. A failure to unanimously find the respondent breached the Ethics Code shall be considered a finding that the respondent did not breach the Ethics Code.

The Ethics Committee must dismiss the complaint upon a finding that the respondent did not breach the Ethics Code. Any finding by the Ethics Committee that the respondent did not breach the Ethics Code may not be appealed by the complainant.

If the Ethics Committee finds that the respondent breached the Ethics Code, the Ethics Committee must make further written findings regarding the following: the specific provision(s) of the Ethics Code breached by the respondent; the facts supporting the finding of a breach of the Ethics Code by the respondent; the date or dates (as applicable) when the respondent breached the Ethics Code or a violation occurred; and any other findings the Committee deems relevant to its report and/or recommendation. The Ethics Committee must date its findings and must send to the respondent and the complainant a copy of the Committee's findings within three (3) days of the date of the findings. A complainant may not appeal any findings by the Ethics Committee.

5. **Report of Finding of Breach of Ethics Code.** Unless appealed by the respondent, the Ethics Committee shall make a written report after a finding that the respondent breached the Ethics Code or a violation of the Ethics Code occurred. The report shall be prepared and made as soon as practical after the Ethics Committee makes its findings, but in any event, no later than thirty (30) days after the meeting at which the Ethics Committee makes its finding. The written findings of the Ethics Committee made pursuant to paragraph/section VI.D.4. of these rules may be the written report. The report shall be presented to Commissioners Court if the respondent is an elected official, department head or member of a committee or commission appointed by Commissioners Court. The report shall be given to the respondent's supervising elected official or department head if the respondent is not an elected official or department head. The report must include the specific provision(s) of the Ethics Code breached by the respondent or for which a violation has occurred; the facts supporting the finding of a breach or violation of the Ethics Code by the respondent; the date or dates (as applicable) when the respondent breached the Ethics Code; and any other findings the Committee deems relevant to its report and/or recommendation. A copy of the written report of the Ethics Committee after a finding that the respondent breached the Ethics Code or a violation has otherwise occurred shall be forwarded to the Human Resources Department and included in the respondent's personnel file if the respondent is an elected official or employee of the County.

6. **Appeal by respondent.** A respondent who the Ethics Committee finds breached the Ethics Code may appeal (a) the Ethics Committee findings, (b) the Ethics Committee report, or (c) both the findings and the report to a panel of three volunteer mediators assigned by the Executive Director of the Dispute Resolution Center of Montgomery County, Inc. (the "Appeal Panel"). The respondent must initiate the appeal by filing a notice of appeal with the County Attorney on or before fifteen (15) days after the date of the findings and/or report to be appealed, whichever is later. The Appeal Panel will review the materials presented to the Ethics Committee *de novo* and by a majority either (a) uphold the findings, or (b) overrule the findings. The complaint must be dismissed if the Appeal Panel overrules the findings. The Ethics Committee shall not make its written report to the Commissioners Court or the elected official as described in paragraph/section 4 above until three (3) days after the Appeal Panel sustains the

Ethics Committee's findings. The Ethics Committee shall withdraw its written findings and report if the Appeal Panel overrules the Ethics Committee's findings and/or report.