

1 **§ A8A-4. Investigation of alleged violations; advisory opinions.**

2 Complaints. Upon receipt of a sworn complaint of a person alleging a violation of this article,
3 or upon the Board of Ethics determining on its own initiative that a violation of this article may
4 exist, if the complaint is against an elected County official, or a member of the Board of Ethics,
5 it shall be referred to outside, Independent Counsel for investigation and determination, all
6 other complaints shall be referred to the Board of Ethics and the Board of Ethics shall have the
7 power and duty to undertake an investigation to determine whether a violation has occurred by
8 and/or against a non-elected County official or employee of the County. Independent Counsel
9 shall be bound by the same time frames provided below for the Board of Ethics.

10 A. In the event a proceeding is commenced by sworn complaint, the Board shall, within 60
11 business days, review the allegations and supporting documentation and determine whether
12 or not a violation of this article has been alleged and/or if the complaint falls within the
13 prohibitions of this article. The 60 business days may be extended by agreement between
14 the Board of Ethics and the complainant. To the extent circumstances require an expedited
15 review of a complaint, the Board shall endeavor to provide its initial determination to the
16 complainant within a reasonable, expedited time frame. The Board shall render its initial
17 determination by majority vote. In the event the Board determines that the complaint does
18 not allege a violation of this article, the complaint shall be dismissed and simple notice of
19 the complaint and of its dismissal, without further detail, shall be mailed to the
20 complainant. The complaint and the determination shall be sealed and not available to any
21 person not a member of the Board of Ethics. The complaint and Ethics Board
22 determination is confidential and shall not be shared by the complainant with any person
23 not a member of the Board of Ethics.

24 B. In the event a member of the Board of Ethics raises the possibility of a violation by a non-
25 elected County official, the Board shall first determine, by majority vote, whether the
26 alleged conduct, if undertaken, would constitute a violation of this article. In the event the
27 Board determines that the conduct would not constitute a violation of this article, it shall
28 render a written determination. The complaint, preliminary investigation and
29 determination shall be sealed and not available to any person not a member of the Board
30 of Ethics.

31 C. Upon the review set forth in Subsection A above, in the event the Board determines that
32 any element of the complaint, if true, would constitute a violation of this article, it shall
33 provide written notification to the subject of the complaint within five business days. The
34 notification shall identify the complainant, describe the alleged violation and provide 15
35 business days in which the subject of the complaint may submit a sworn, written response
36 setting forth information and/or documentation sufficient to address the alleged violation.
37 The Board's notification shall also inform the subject of the complaint of its rules regarding
38 the conduct of adjudicatory proceedings, appeals, and the due process procedural
39 mechanisms available to such individual.

40 (1) In the event the Board of Ethics determines at any stage of the proceeding that the
41 proof presented does not demonstrate that a violation has occurred, or that there is no
42 violation or that any potential conflict of interest or violation has been rectified, it
43 shall, within 15 business days, provide written notice to the subject of the complaint

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44 and the complainant. The foregoing notice of determination shall be confidential,
45 except the subject of the complaint may, in defense of any claim made against him/her,
46 disclose the determination of the Board.

47 (2) Upon review of the complaint and of any information or documentation provided by
48 the subject of the complaint, a further investigation to determine whether reasonable
49 cause exists to believe a violation has occurred shall be commenced and completed
50 within 30 days, unless circumstances require a shorter or longer period of time. In the
51 event the Board requires more than 30 days to complete its investigation, it shall
52 provide notice of same to the complainant and the subject of the complaint.

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54 (3) In the event the Board determines there is reasonable cause to believe a violation has
55 occurred, it shall provide written notice of reasonable cause to the subject of the
56 complaint and to the complainant. In the case of a non-elected County official or
57 employee, the Board shall also provide written notice to the appointing authority for
58 such person, ~~and, in the case of a County elected official, written notice to the Chair
59 of the County Legislature. In the event of a conflict with the Chair, then notice shall
60 be given to the Vice Chair.~~ Such determination of reasonable cause shall not be
61 disclosed or made public unless required by Public Officers Law or for use in a
62 disciplinary proceeding or a proceeding under this article involving the subject of the
63 complaint or another County official.

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65 (4) ~~In the event Independent Counsel determines there is reasonable cause to believe a
66 violation has occurred by and/or against an elected County official, or a member of
67 the Board of Ethics, it shall provide written notice of reasonable cause to the subject
68 of the complaint and to the complainant. In the case of an elected County official,
69 Independent Counsel shall also provide written notice to the Chair of the County
70 Legislature. In the event of a conflict with the Chair, then notice shall be given to the
71 Vice Chair. Such determination of reasonable cause shall not be disclosed or made
72 public unless required by Public Officers Law or for use in a disciplinary proceeding
73 or a proceeding under this article involving the subject of the complaint or another
74 elected County official or non-elected County official.~~

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76 (5) Once reasonable cause has been established, the Board of Ethics shall schedule a
77 formal hearing, to be held within 60 days, at which the subject of the complaint is
78 entitled to legal representation of his or her own choosing and at his or her own
79 expense. Testimony shall be taken under oath and the proceeding shall be recorded.
80 The Board shall issue a decision containing specific findings within 30 days of the
81 completion of the hearing. A copy of the decision shall be served by certified mail on
82 the subject of the complaint or his or her legal representative, the complainant, and the
83 Clerk of the Legislature. The decision of the Board of Ethics shall not be confidential.

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85 D. Dispositions. The Board shall state, in writing, the disposition of every sworn complaint it
86 receives and of every investigation it conducts and shall set forth the reasons for the
87 disposition. The report shall be made in accordance with § A8A-3F, subject to the
88 confidentiality requirements set forth herein.

89 E. Advisory opinions.

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90 (1) An elected County official, a non-elected County official or employee or other
91 government official may request an advisory opinion from the Board of Ethics prior to
92 that elected County official, non-elected County official or employee or other
93 government official engaging in any behavior which he or she reasonably believes may
94 cause a violation of this article. The request for an advisory opinion shall be written
95 and sworn to and shall contain sufficient facts to permit the Board to make its
96 determination. An individual requesting the opinion is obligated to be forthcoming and
97 cooperative throughout the process, in the absence of which no advisory opinion will
98 be provided. The Board shall endeavor to provide written notice of its determination
99 within 10 business days. The elected County official, non-elected County official or
100 employee who requested the opinion shall be notified of the Board's determination
101 within 48 hours of the determination.

102 (2) Advisory opinions shall be filed with the Clerk of the Legislature; however, the Board
103 of Ethics shall first redact all names, identifying features, and any other information
104 which would tend to identify the complainant and the subject of the request for the
105 advisory opinion.

106 (3) In the event a complaint is subsequently filed against an elected County Official, a non-
107 elected County official or employee or other government official in which a violation
108 of this code is alleged based upon the facts which formed the basis of the request for
109 the advisory opinion, it shall be a complete defense to the alleged violation that the
110 elected County official, the non-elected County official or employee or other
111 government official acted consistent with, and in reliance upon, said advisory opinion.
112 An unredacted advisory opinion shall be available to the elected County official, the
113 non-elected County official, or employee who sought or needs it to defend himself or
114 herself.

115 F. Complaints against the Board of Ethics. The Board of Ethics shall not conduct an
116 investigation of itself or any of its members or staff. In the event the Board of Ethics
117 receives a sworn complaint in which it is alleged that the Board or any of its members or
118 staff has violated any provision of this article or any other law, it shall transmit a copy of
119 the complaint to the Chair of the Legislature and the County Attorney within 48 hours of
120 receipt of same. The Chair of the Legislature shall, within five business days, ~~create a~~
121 ~~three-person subcommittee of legislators, at least one of whom is a member of a minority~~
122 ~~party, to address the complaint and provide the complainant with written notice of the~~
123 ~~subcommittee members. The subcommittee shall thereafter conduct whatever~~
124 ~~investigation or hearing necessary in the same manner and with the same authority as~~
125 ~~provided generally in this section. refer the matter to outside, Independent Counsel for~~
126 ~~investigation and determination.~~ A copy of the ~~subcommittee's~~ Independent Counsel's
127 findings and decision shall be distributed to all members of the Legislature. Further action,
128 if any, shall comply with the provisions of this article.

129 G. False complaints. Any person who knowingly files a false complaint may be subject to
130 disciplinary action, civil liability, or criminal prosecution.
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