

**HO-CHUNK NATION
ETHICS REVIEW BOARD
HEARING REGULATIONS**

Adopted: November 7, 2014

Section 1. Purpose and Scope.

1.a. The purpose of these Regulations are to set forth hearing procedures applicable to proceedings governed by the Ho-Chunk Nation Code of Ethics Act, 2 HCC § 1, before the Ethics Review Board (“ERB”). The hearing procedures in these Regulations apply to all matters involving the issuance of a final decision of the ERB concerning a violation by a Public Official of the Code of Ethics Act.

1.b. The procedures in these Regulations are designed to promote fairness and flexibility in dealing with a wide range of ethical matters. The ERB is not precluded by these regulations from issuing warning notices or advisory letters regarding violations or possible violations of law or regulation.

Section 2. Definitions.

The terms used in these Regulations have the meanings given them in the Ho-Chunk Nation Code of Ethics Act. Where a term is not defined by the Ho-Chunk Nation Code of Ethics Act, the term shall be given its plain and ordinary meaning and shall be defined so as to effect the full authority of the ERB.

2.a. Lay Advocate: serves a role similar to an attorney; once training is complete, a lay advocate may represent individuals in any matter before Ho-Chunk Nation Trial and Supreme Courts.

Section 3. Notice of Hearing.

3.a. If the ERB determines that a properly filed Complaint has sufficient merit to warrant a hearing, a Notice of Hearing shall be issued to the Complainant and Respondent. The Notice of Hearing must be a written statement setting forth in ordinary and concise language:

- (i) The date, time, and place of the hearing.
- (ii) The allegations giving rise to the Notice as contained within the Complaint.
- (iii) The right of the Respondent to be represented by counsel or an advocate and to present documents, testimony, and other exhibits at the hearing.

- (iv) Failure by the Respondent to appear at the hearing may result in a default judgment and the imposition of fines and penalties against Respondent.

3.b. The Notice of Hearing shall be served by the ERB on the Complainant and Respondent either personally or a mail service that can track delivery at the most recent address on file with the ERB. Proof of service may be provided by mail service or affidavit of service, which shall be signed by the person effecting service and which shall specify the date and manner of service.

Section 4. Appearance through Advocate or Counsel

4.a. Parties to any Hearing shall be the Complainant and Respondent.

4.b. Parties may appear personally or through an advocate or attorney, except that the parties must personally attend any hearing on the merits.

4.c. When a party has appeared through an advocate or attorney, service of all notices, motions, orders, decisions, and other papers shall be made upon the advocate or attorney.

4.d. Advocates or attorneys in all hearings before the ERB shall file a Notice of Appearance with the ERB and shall be admitted to practice before the Ho-Chunk Nation Judiciary.

Section 5. Discovery/Required Disclosures

5.a. Not less than fifteen (15) calendar days before the hearing, the parties shall:

- (i) Exchange written lists specifically identifying all exhibits which are intended to be offered as evidence in support of the party's case. A copy of said list shall be filed with the ERB. With respect to documents identified as exhibits, the parties shall exchange copies of all such documents reasonably available to a party. With respect to tangible things, other than documents, each party shall upon request arrange for the opposing parties to inspect, copy, test, or sample the same under the supervision of the parties; and
- (ii) Exchange written lists of persons each party intends to call as witnesses in support of the party's case. A copy of said list shall be filed with the ERB. Each witness shall be identified by name, employment position and business or home address. The party identifying the witness shall also provide a brief description of the purpose for which the witness will be called and a brief summary of the witness' expected testimony. Any witness who must be subpoenaed will be so designated.

5.b. Failure of a party to identify witnesses, proposed testimony, documents or other tangible things in accordance with these Regulations renders the evidence inadmissible at the

hearing unless the ERB Chairperson, or Member presiding over the hearing, in her/his discretion allows such evidence for good cause.

Section 6. Confidential Information.

6.a. Subject to any limitations or requirements contained in the Code of Ethics Act, if any document or other material required to be produced by the Complainant or Respondent is considered confidential, the ERB shall designate such documents or other material "confidential."

6.b. ERB Members, Complainants, and Respondents shall not disclose or disseminate confidential materials or information except to its attorney or advocate in the action. Violation of this section constitutes grounds for additional ethics disciplinary action.

Section 7. ERB Hearing Body Composition.

7.a. The ERB Hearing Body shall be comprised of the ERB Members selected by the Chairperson pursuant to Section 12.a.(3) of the Code of Ethics Act.

7.b. The Chairperson will preside over the hearing and will be responsible for controlling the presentation and admissibility of evidence, appearance of witnesses, and the overall order of the hearing. Where the Chairperson cannot participate in a hearing due to a conflict, the ERB Members assigned to a hearing will choose amongst themselves a Hearing Officer to preside over the hearing.

7.c. Any party who seeks the recusal of an ERB Member must file a motion for recusal within five (5) business days of the filing of the Notice of Hearing.

Section 8. Subpoenas.

8.a. Upon the request of a party, the ERB shall issue subpoenas to compel any person to appear at the hearing and give oral testimony or produce documents or other tangible things.

8.b. Subpoenas shall be submitted to the ERB for issuance on a form prescribed by the ERB for this purpose. The subpoena request must contain the title and number of the case, the name of the person to whom the subpoena will be directed, the date, time, and place of the hearing, and the name and signature of the requesting party or his or her attorney and/or advocate. A subpoena for documents or other tangible things must contain a complete description of the specific documents or tangible things that the witness will be required to produce at the hearing.

8.c. A subpoena must be served by the requesting party at least ten (10) calendar days prior to the hearing. A subpoena may be issued during the hearing or upon less than ten (10)

calendar days notice only upon order of the ERB for good cause shown by the requesting party.

8.d. Any person or entity who fails to comply with a subpoena may be held in contempt.

Section 9. Conduct of Hearings.

9.a. Failure to appear at a properly noticed hearing constitutes an admission by the Respondent of all matters and facts contained in the Notice of Hearing, and a waiver of the right to a hearing. If the ERB Hearing Body takes action in the absence of a hearing, it shall render findings of fact, conclusions of law and a determination as to penalty based on the information in the record before it.

9.b. Every party has the right to:

- (i) Call and examine witnesses;
- (ii) Introduce exhibits relevant to the issues of the case;
- (iii) Cross-examine witnesses on any matters relevant to the issues of the case, even though the matter was not covered in a direct examination;
- (iv) Impeach any witness regardless of which party called the witness to testify; and
- (v) Offer rebuttal evidence.

9.c. Presentation Order.

- (i) The Complainant may make an opening statement. The Respondent will then be permitted to make an opening statement or may reserve that statement until commencement of the presentation of his or her case.
- (ii) The Complainant will then present its case in support of the allegations contained in the Notice of Hearing.
- (iii) The Respondent shall then present its case.
- (iv) Upon conclusion of the Respondent's case, the Complainant may present rebuttal evidence.
- (v) The Complainant may then present its closing argument, Respondent may present a closing argument, and thereafter the Complainant may present a rebuttal argument.

(vi) At the conclusion of the hearing, the record may be closed, or in the sole discretion of the ERB, the record may remain open fourteen calendar days for the purpose of receiving any supplemental information requested by the ERB.

9.d. Any member of the ERB assigned to the hearing may ask questions of witnesses, and may request or allow additional evidence at any time, including additional rebuttal evidence.

9.e. The hearing must be recorded.

9.f. Closed Hearing. Due to confidential and private matters, hearings will be closed to the public. Only Members of the Ethics Review Board, counsel to the Ethics Review Board, the Complainant, the Respondent, counsel of each party, the court reporter, and recording technician may be present at all times. Witnesses will be present only when giving testimony and shall be instructed to not discuss their testimony with any other individual during the hearing.

Section 10. Burden of Proof

The Complainant shall have the burden of supporting its proposed action by a preponderance of the evidence. If another party asserts any affirmative defenses, that party shall have the burden of proving the defense by a preponderance of the evidence.

Section 11. Evidence.

11.a. The Rules of Evidence do not generally apply to Hearings, only those rules outlined below.

11. b. The parties may present oral documentary or other evidence.

11.c. The parties may present eyewitness testimony of occurrences, including third-party conversations. The parties may not present testimony if the witness was not present.

11.d. Any party may raise legal privileges that are customarily recognized by the Courts of the Nation, including but not limited to marital and attorney-client privilege.

11.e. Irrelevant, immaterial or unduly repetitious evidence shall be excluded upon the request of a party or upon the ERB's own initiative.

11.f. Documentary and other physical evidence may be authenticated or identified by any reasonable means.

11.g. The ERB may take official notice of any fact that may be judicially noticed by other hearing bodies.

Section 12. Postponements

12.a. Postponements will not be granted except for good cause shown. A request to postpone a hearing must be made at least seven (7) calendar days prior to the hearing date. The request must be made in writing and must state with particularity the basis for the postponement request. The ERB shall respond to the request in writing. If the postponement is granted, the ERB shall set a new hearing date and so notify the parties

12.b. The ERB Hearing Body may, in its discretion, grant a continuance less than seven (7) calendar days prior to the hearing upon a showing of a hardship.

12.c. Postponement requests shall be filed with the ERB Attorney.

Section 13. Decision of the ERB Hearing Body

13.a. The ERB Hearing Body shall render a written decision within ninety (90) days of the hearing. The decision must contain findings of fact, conclusions of law, and a determination of the penalty to be imposed, if any.

13.b. The written decision of the ERB shall be served either personally or by registered or certified mail to the address on file with the ERB. Proof of service may be provided by a certificate or affidavit of service, which shall be signed by the person effecting service and which shall specify the date and manner of service.

13.c. Guidelines for Imposing Penalties in Disciplinary Actions. In imposing a penalty, the ERB may consider the following factors:

- (i) Whether the Respondent knew or reasonably should have known, that the action complained of was a violation of any law, regulation, or condition of being a Public Official;
- (ii) Whether the Respondent has previously been the subject of an ethics complaint and whether any penalties have been imposed as a result;
- (iii) Whether the Respondent realized a financial gain from the ethics violation;
- (iv) Whether the amount of any fine and/or other penalty imposed would result in the disgorgement of any financial gain unlawfully realized by the Respondent;
- (v) Whether the Respondent's action substantially deviated from the duties of a Public Official
- (vi) Whether the Respondent cooperated with the ERB during the investigation and the extent of that cooperation;

- (vii) Whether the Respondent has taken corrective action to prevent similar violations in the future;
- (viii) The nature and level of penalties imposed on other Respondents for similar violations;
- (ix) The severity of the misconduct involved and the degree to which the integrity of the Respondent's responsibilities and/or duties were compromised;
- (x) The extent to which the amount of any fine imposed would punish the Respondent for the conduct and deter future violations;
- (xi) Any mitigating factors offered by the Respondent; and
- (xii) Any other factors the ERB in its discretion may deem relevant.