

Rules of Procedure
~~For Disciplinary Matters~~

FORT PIERCE
BOARD OF EXAMINERS OF
CONTRACTORS

City of Fort Pierce, Florida

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**RULES OF PROCEDURE FOR DISCIPLINARY MATTERS
for
FORT PIERCE BOARD OF EXAMINERS OF CONTRACTORS**

Rule 1. Scope and Interpretation

These rules apply to all disciplinary proceedings involving the holder of a contractor's certificate of competency issued pursuant to the provisions of Chapter 5, Article II of the Code of Ordinance of the City of Fort Pierce, Florida and contractor certified by the State of Florida (the Florida Construction Industry Licensing Board, the Florida electrical Contractor's Licensing Board, or the Florida Department of Professional Regulation). These rules shall be construed and interpreted so as to be consistent with state law and local ordinances.

These rules do not apply to disciplinary proceedings involving unlicensed contractors or citations issued pursuant to City ordinance Section 5.53. These matters will be heard by the Special Magistrate.

Rule 2. Definitions

Wherever used in these rules, the following words or terms shall have the meaning set forth unless the use thereof shall clearly indicate a different meaning:

- (a) **"Board"** shall mean the Board of Examiners of Contractors provided for in Chapter 5, Article II of the Code of Ordinances of the City of Fort Pierce, Florida.
- (b) **"Building Official"** shall mean the chief administrator of the department responsible for administration of Chapter 5 of the Code of Ordinances of the City of Fort Pierce, Florida or employees of the City who administer Chapter 5 of the Code of Ordinances of the City of Fort Pierce, Florida subject to the direction and supervision of such department's chief administrator.
- (c) **"Code"** shall mean the Code of Ordinances of the City of Fort Pierce, Florida.
- (d) **"Complainant"** or "complaining witness" shall mean any person who has complained to any officer or agency of the City of Fort Pierce, Florida of the conduct of a contractor.
- (e) **"Contractor"** shall mean the holder of a contractor's certificate of competency issued pursuant to the provisions of Chapter 5, Article II of the Code or a contractor certified by the State of Florida.

(f) **“Department”** shall mean the City of Fort Pierce department responsible for administration of Chapter 5 (Buildings and Building Regulations) of the Code, such department being presently known as the Department of Building and Code Enforcement or as such department may be hereafter renamed.

~~(g) **“Probable cause”** shall mean a finding by an authorized person or agency of the City of Fort Pierce, Florida that there is cause to believe that a contractor is guilty of misconduct justifying disciplinary action.~~

(g) **“Respondent”** shall mean a contractor who is accused of misconduct or whose conduct is under investigation.

(h) Other terms not herein defined shall have the meaning expressly given to them through definition by Chapter 5 and other chapters of the Code. In the event a term is not expressly defined as aforesaid, such terms shall be given the meaning accorded through normal, customary usage.

Rule 3. Jurisdiction

The Board shall have jurisdiction over disciplinary matters involving a contractor pursuant to §5-50 – 5-52 of the Code.

Rule 4. Officers

(a) **Chair.** The Chair shall preside at all meetings and hearings of the Board, shall have the duties normally conferred by parliamentary usage on such officers, and shall sign all orders as may be adjudicated and/or authorized by the Board.

(b) **Vice Chair.** The Vice Chair shall act in the absence or disqualification of the Chair and, in such an event, shall exercise or perform all duties and be subject to all responsibilities of the Chair, including signing orders as may be adjudicated and/or authorized by the Board in the absence of the Chair. In the absence or disqualification of the Chair and the Vice Chair, a majority of the Board members present may designate a temporary Chair to serve in such absence.

(c) **Secretary.** ~~The Secretary for the Board shall be the director of the Department, or his designee~~ The director of the Department, or his designee shall serve as the secretary of the Board. The Secretary shall maintain a record of Board proceedings, maintain all records pursuant to those proceedings, prepare and deliver meeting agendas, and, in general, serve as the liaison between the Board and the City of Fort Pierce and perform those duties more specifically provided in these rules.

(d) **Board Attorney.** The Office of the City Attorney of the City of Fort Pierce, Florida shall provide counsel for the Board to serve as a legal advisor.

Rule 5. Standards of Conduct

- (a) **Notice and Knowledge of Code.** Every contractor who contracts within the jurisdiction of the City of Fort Pierce, Florida, is within the jurisdiction of the City of Fort Pierce, Florida and its agencies and is charged with notice and held to know the standards of conduct prescribed by the Code and state law.
- (b) **Rules of Conduct.** Violations of the Rules of Conduct as prescribed by Chapter 5, Article II of the Code and state law is a cause for discipline.

Rule 6. Complaint Processing and Initial Procedures

- (a) **Complaint.** Any person, including, but not limited to, the director of the Department, may prefer charges against a contractor. Such charges shall be made in writing and sworn to by the complainant or complaining witness and submitted to the building official. ~~who shall immediately notify the Chairman of the Board of the receipt thereof.~~ The building official shall mail a copy of such charges to the Respondent within 15 days from the receipt thereof, and the Respondent may submit a written response to the complaint within 15 days after the service to the Respondent of the complaint.
- (b) **Screening and Processing of Complaint**
 - ~~(1) The director of the Department and the Chairman of the Board shall review the complaint and the Respondent's written response, if any, for probable cause.~~
 - ~~(2) If no probable cause is found, the complaint shall be denied and not referred to the Board; provided, however, that a finding of no probable cause shall not preclude the reopening of the complaint and further proceedings thereon. A copy of the complaint and the findings of the director of the Department and the Chairman of the Board shall be placed in the Respondent's file. The Complainant shall be notified of the denial and shall have no right of appeal.~~
 - ~~(1) If probable cause is found,~~ The complaint shall be referred to the Board for hearing thereon, and the Respondent and the complainant shall be notified of such ~~finding and referral.~~ hearing.

Rule 7. Board Proceedings

- (a) **Complaint Referred to Board Proceedings.** ~~When a finding of probable cause has been made and the complaint based on such finding of probable cause has been referred to the Board for hearing,~~ The proceeding ~~thereafter~~ shall be an **adversary adversarial** proceeding that shall be conducted as hereinafter set forth.
- (b) **Nature of Proceedings.** A disciplinary proceeding is neither civil nor criminal in nature but is considered a quasi-judicial administrative proceeding.

(c) **Style of Proceedings.** All such disciplinary proceedings before the Board shall be styled “(name of complainant), Complainant v. (name of respondent), Respondent,” and “Before the Fort Pierce Board of Examiners of Contractors.”

(d) **Hearing Notices.**

(1) **Initial Notification.** The complaint may be set down for hearing by the Board and/or the Department upon not less than 15 days’ notice thereof to the Respondent. The Department shall provide such notice of hearing to the Respondent by certified mail, return receipt requested, by hand-delivery by a law enforcement officer or the building official, or by leaving the notice at the Respondent’s usual place of business or usual place of residence. Such notice shall include this highlighted statement: **“A copy of the Rules of Procedure for Disciplinary Matters for the Fort Pierce Board of Examiners of Contractors may be obtained upon request from the Department of Building and Code Enforcement.”**

(2) **Subsequent Proceedings.** Notification of subsequent proceedings provided by these rules shall be by regular mail, at least 7 days in advance of the date such subsequent proceedings are to be held before the Board.

(e) **Subpoenas.**

(1) Subpoenas for testimony before the Board may be issued by the Secretary upon the request of the Department or by any attorney of record for and on behalf of the Respondent. Every subpoena shall issue under seal of the City of Fort Pierce, Florida, shall state the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(2) On oral request of the Department or any attorney of record for and on behalf of a Respondent, the Secretary shall issue a subpoena for testimony before the Board, sealed but otherwise in blank except as described above, and the subpoena shall be filled in before service by the Department or attorney.

(f) **Continuances.**

In the event there are circumstances constituting good cause for the Respondent to seek a continuance or a postponement of a hearing, the Respondent may file a written request for a continuance or postponement with the Department. Such request must be made within a reasonable time following the date the Respondent became aware of the circumstances which formed the basis of the request, and such request must specify the circumstances justifying the request with particularity.

~~The director of the Department and the Chairman of the Board shall review the request to determine whether there is good cause for the request and whether such good cause, if any, outweighs the public interest, if any, in allowing the hearing to proceed as originally scheduled, and the request will then be granted or denied by the director of the Department and the Chairman of the Board. If the request is granted, notice thereof shall be provided to the Respondent, the complainant, and~~

~~any other interested persons, and the Department shall cause the hearing to be rescheduled.~~

~~If the request is denied, The Respondent shall be provided with notice thereof that and the hearing shall proceed as originally scheduled, provided, however, that at the commencement of said hearing, the Respondent shall have the right to renew such request or make another request for a continuance at the commencement of said hearing in which event the~~ Board shall determine whether there is good cause for the request and whether such good cause, if any, outweighs the public interest, if any, in allowing the hearing to proceed as originally scheduled; and such request will then be either granted or denied by the Board. If such ~~renewed~~ request is granted by the Board, then the Department shall cause the hearing to be rescheduled, and if such ~~renewed~~ request is denied by the Board, then the hearing shall proceed as originally scheduled.

(g) Hearings.

(1) **Conduct of Proceedings.** Generally accepted parliamentary procedures shall apply and prevail at hearings before the Board except as may otherwise be provided for in these rules. The proceedings before the Board may be informal in nature and the Board shall not be bound by the rules of evidence. The Board shall be entitled to rely on such evidence as is regularly relied upon in the ordinary course of the conduct of business.

(2) **The Record.** Minutes shall be kept of all hearings before the Board by the Secretary, who shall record all testimony. The record shall include all items properly filed in the cause, including pleadings, recorded testimony, if transcribed, exhibits and evidence, and the finding and rulings of the Board.

(3) **Order of Presentation.**

If the Respondent admits to the alleged charges, the Board may immediately make a finding of guilt without further testimony, and if the Respondent fails to appear at the hearing, the Board may make its determination based upon the sworn complaint, items properly filed in the cause, exhibits received in evidence, and any testimony presented.

If the Respondent contests the alleged charges, the Chair shall call upon the Department or the complainant to present evidence in support of the charges. The Respondent may then present evidence in opposition to the charges, including being allowed to testify and to present evidence and other witnesses on the Respondent's behalf. The Respondent may be accompanied by counsel and shall be given the opportunity to make a statement, personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting, or admitting the alleged charges. Both sides shall have a right of cross examination, subject to reasonable limitation.

The Board may question any witness or call any witness believed necessary. Any member of the public having direct knowledge of the facts of the case and desiring to testify may be recognized by the Chair as appropriate, but is

encouraged to first discuss such testimonial contribution with the party on whose behalf it is tendered.

The Board may, in an exercise of reasonable discretion, continue a hearing in the interest of justice should there be a determination that further information is necessary from either party, whereupon there shall be declared a date certain for continuation of the proceeding or notice thereof.

The Chair may act to exclude irrelevant, immaterial or unduly repetitious evidence but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial of the courts of the State of Florida. Motions shall be ruled upon by the Board, and objections shall be ruled upon by the Chair. Upon presentation of all evidence, the hearing shall be closed.

- (4) **Rights and Responsibilities of the Respondent.** The Respondent may be required to testify and to produce evidence as any other witness unless the Respondent claims a privilege or right properly available to the Respondent under applicable federal or state law. The respondent may be accompanied by counsel. At a reasonable time before any finding of probable cause or misconduct is made, the Respondent shall be advised of the conduct that is being investigated and the alleged charges. The Respondent shall be provided with all materials considered by the Board and shall be given an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.
- (5) **Rights of the Complainant.** ~~The complainant or complaining witness is not a part of the disciplinary proceeding.~~ Unless it is found to be impractical by the Chair due to unreasonable delay or other good cause, if the complainant or complaining witness is present at the hearing before the Board he/she is permitted to present evidence and or testimony regarding the complaint shall be granted the right to be present at any Board hearing when evidence is to be presented, subject to reasonable limitation. Neither unwillingness nor neglect of the complaining witness to cooperate, nor a settlement, compromise, or restitution, will excuse the disposition of the alleged charges by the Board. ~~The complaining witness will have no right of appeal from the decision of the Board.~~
- (6) **Disposition of Charges.** Upon conclusion of the hearing, the Board shall make a determination. First, the Board shall determine whether the Respondent is guilty or not guilty of the alleged misconduct. If the Respondent is found to be guilty of the alleged misconduct by the Board, the Board shall thereupon enter its findings, an order of guilt and determine the proper disciplinary action to be imposed upon the Respondent by motion. The Board's ruling shall be reduced to writing and mailed to the Respondent and to any other person or entity directed by the Board.

Deliberations of the Board on any complaint shall be conducted in open session immediately following the hearing. Although the hearings and proceedings

before the Board shall be open to the public, such members of the public may not participate in or address the Board during deliberations unless specifically allowed by the Chair.

- (7) **Quorum and Voting.** No fewer than six (6) members of the Board shall constitute a quorum. All findings of guilt and recommendations of discipline shall be by affirmative vote of a majority of the Board members present, which majority must number at least four (4) members.

Voting on the disposition of complaints shall be either a voice vote or roll call voter except that, in the event the vote is less than unanimous, then, in order to preserve clarity in the record, the Chair shall conduct the vote by roll call.

Procedures involving a voting conflict for a member of the Board shall be governed by applicable Florida law, including §112.3143, Florida Statutes.

Pursuant to §286.012, Florida Statutes, no member of the Board who is present at a hearing may abstain from voting on any matter to be taken or adopted by the Board except when, with respect to any such member, this is, or appears to be, a possible conflict of interest under the provisions of §112.3143, Florida Statutes.

Rule 8. Rehearings

Within ten (10) days of the date the Board's written order is mailed to the Respondent, the Respondent may file with the Department a written request for the rehearing. The request shall include a description of new evidence or circumstances not presented or considered at the original hearing and should also state why any such new information was not presented at the original hearing. The Department shall schedule the request for rehearing by the Board at its next regular meeting, with notice to the Respondent. No such request shall stay the term of any order entered by the Board, except as otherwise provided for in these rules or in the Code.

Rule 9. Appeals and Stays

- (a) **Appeals.** Any decision of the Board imposing disciplinary action on a Respondent may be appealed by the Respondent to the City Commission within 15 days of the date of the Board's decision; provided, however, a written notice of such appeal shall be filed with the city clerk within such a period of time. The city clerk shall notify all interested parties of the date fixed for hearing the appeal, which dates shall be not less than 30 days after the date of the filing of the notice of appeal. The hearing on appeal shall be, to the extent possible, upon the record and shall not be a hearing de novo. The city commission shall review the transcript of the hearing before the Board together with any tangible evidence considered by the Board that determined its decision. The city commission may also entertain any additional testimony or evidence offered by the Respondent or other interested party that was not brought out at the Board hearing.

- (b) **Stays.** Any decision of the Board imposing disciplinary action upon a respondent, other than revocation, which has been appealed by the Respondent shall be automatically stayed upon receipt of the written notice of appeal by the city clerk.

Rule 10.

Amendments

These rules may be amended by the Board upon motion of any Board member, provided, however, that any such amendment shall not be effective unless or until subsequently ratified or approved by the city commission.