



CITY OF SOUTH BEND BOARD OF PUBLIC SAFETY ADMINISTRATIVE HEARING RULES AND PROCEDURES

- I. Title and Scope.** These rules are being created pursuant to the authority vested in the Board of Public Safety by Indiana Code 36-8-3-2, and shall be known as the Rules of Practice and Procedure before the City of South Bend Board of Public Safety (“Board”). The Rules of Practice and Procedure before the Board shall govern all administrative hearings conducted by the Board.
- A. These rules shall apply to proceedings commenced after the effective date of these rules, except the Board, in its exclusive discretion, may by order, prescribe that the proceedings may continue in whole or in part in the matter prescribed outside of these rules or practices if they would expedite the just and efficient disposition of the pending proceeding.
 - B. These rules are intended to govern the administrative proceedings conducted by the Board which are for the purpose of adjudicating any grievance or disciplinary hearing requested or required by law or by the respective collective bargaining agreements governing the parties.
 - C. If any portion of these rules shall be amended, repealed, or found to be unconstitutional or in conflict with law, the validity of the remainder shall not be affected.
 - D. If any statute upon which these rules are based shall be amended or repealed, the affected portion of these rules shall be deemed to be amended to conform with said statute.
 - E. If, in any portion of these rules, reference is made to one gender, it shall be read and assumed to refer to both genders.
 - F. Copies of these Rules shall be kept at the City of South Bend Legal Department and shall be available to any person upon request.
- II. Commencement of Proceedings.** A proceeding is commenced by:
- A. A request from a member of the police or fire department for a hearing subsequent to the filing of recommended disciplinary action pursuant to Indiana Code § 36-8-3-4; or
 - B. A request from a member of the police or fire department for a hearing subsequent to the filing of recommended disciplinary action pursuant to Indiana Code § 36-8-3-4.1, which has been granted by the Board; or
 - C. The escalation of a grievance pursuant to the rules set forth in an active collective bargaining agreement.
- III. Time.** In computing time prescribed or allowed by these rules or by any applicable statute in which the method of computing time is not specifically provided, the days will

be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a City holiday, in which event the period runs until the end of the next day on which the City shall be open for regular business.

IV. Service.

- A. Notices, motions, pleadings, orders, or other papers may be served personally, by regular mail, or by electronic mail to all parties and by all parties except where the statute prescribes a specific mode of service, which then shall be followed.
- B. All parties who have entered their appearances in any proceeding shall be served with all notices, motions, pleadings, orders, or other papers filed in said matter by the Board and all parties. Service upon an attorney of record shall be deemed to be service upon the party represented by such attorney.
- C. At the time any pleading or document is mailed or delivered to the Board for filing, it shall contain a certificate of service endorsed thereon, showing the time, place, and manner of service on all parties.

V. Appointment of Hearing Officer

- A. The Board may, upon receipt of a request for a hearing, make written appointment of a Hearing Officer. The Hearing Officer shall:
 - 1) Be a licensed attorney with his license status either:
 - a. active and in good standing, or
 - b. retired, but previously active and in good standing; and
 - 2) Be unbiased and impartial as to the subject proceeding.
- B. The Hearing Officer may be an employee of the City of South Bend but shall not be anyone who has participated in the decision-making process that led to the hearing.
- C. For good cause shown or on the Hearing Officer's own motion, the parties may move for the recusal of the Hearing Officer. The Board shall make the final administrative decision regarding any motions of this nature.

VI. Pre-Hearing Conference Procedure

- A. The Board shall, upon the request of any party or on their own motion, direct the attorneys of the parties (or to parties themselves, if pro se), to appear for a pre-hearing conference to consider:
 - 1) Simplification of the issues and determining relevance of the evidence;
 - 2) Obtaining admissions or stipulations of facts not remaining in dispute, or to determine the authenticity of documents that may properly shorten the hearing;
 - 3) The limitation of the number of witnesses;
 - 4) The discovery or production of evidence;
 - 5) Matters of which official notice should be taken;
 - 6) Disclosure of the names of witnesses;

- 7) The issues of law which may eliminate or affect the hearing and the issues of fact;
- 8) The necessity or desirability of amendments to the pleadings;
- 9) Invoking the rules of evidence; and
- 10) Such other matters as may aid in the disposition of the proceedings.

B. The Board or the Hearing Officer at any pre-hearing conference may dispose of by ruling, irrespective of the consent of the parties, any procedural matters which the Board or the Hearing Officer is authorized to rule upon during the course of the proceedings; and which appears appropriate to be disposed of at that stage. The rulings of the Board and the Hearing Officer made pursuant to this Section shall control the subsequent course of the hearing, unless modified by the Board or Hearing Officer as provided by these rules.

VII. Continuances. A hearing shall commence at the time and place fixed in the notice of hearing, but thereafter may be adjourned from time to time by the Board. The Board, for good cause shown and consistent with notions of fairness and expediency, may continue or adjourn any hearing in accordance with requirements set forth in Indiana Code § 5-14-1.5. Continuances and adjournments may be requested orally or in writing by mutual agreement of the parties and such requests may be granted or denied at the sole discretion of the Board. For purposes of this Chapter, the word “hearing” applies to pre-hearing conferences as well as administrative hearings.

VIII. Discovery. The procedure established in this Chapter is applicable to the discovery of information among the parties in any administrative hearing before the Board.

- A. Parties may obtain discovery pursuant to Rule 26 of the Indiana Rules of Trial Procedure, except as modified by these rules and the timelines required by Indiana Code §§ 36-8-3-4 and 4.1.
- B. The Board and/or the Hearing Officer may, upon request, set timelines in all discovery proceedings before it to the extent that it is completed within the timelines established in Indiana Code §§ 36-8-3-4 and 4.1.
- C. The Board and/or the Hearing Officer shall grant or deny discovery pursuant to considerations of fundamental fairness and justice. Such considerations shall take into account relevance, timeliness, and the relative benefit the discovery is likely to produce for the Board.
- D. To secure discovery in compliance with this Chapter, the Board may issue subpoenas pursuant to the directives listed in Indiana Code § 36-8-3-4(d). All subpoenas issued shall provide a reasonable amount of time for the respondent to comply with the subpoena.

IX. Hearing Procedures

- A. Any individual may appear on his own behalf before the Board. An attorney may appear on behalf of another only if: 1) he is admitted to practice law by the Indiana Supreme Court; or 2) he is admitted to practice law before the Supreme

Court of any State and is accompanied by a person admitted to practice law before the Courts of this State.

- B. Every party shall have the right of timely notice and all other rights essential to a fair hearing, including but not limited to, the right to present evidence, to conduct cross-examinations as may be necessary for complete and full disclosure of the facts, and to be heard by objection, motion, brief, and argument.
- C. Generally, all hearings shall be open to the public. Upon motion of either party, the Board may in its sole discretion close the hearing to the public pursuant to Indiana Code § 5-14-1.5-6.1(b)(6)(A).
- D. Any person compelled to testify in any proceedings in response to a subpoena may be accompanied, represented, and advised by legal counsel, and may purchase a transcript of his testimony.
- E. After opening the hearing, the Board shall proceed to dispose of the matters in the following order:
 - 1) Pending motions;
 - 2) Stipulation of the parties;
 - 3) Opening statements of the parties. Opening statements by each party, if made, shall be less than ten (10) minutes in duration, although the parties may make written or oral stipulations in conformance with these rules, and stipulations of fact will be regarded as evidence at the hearing.
 - 4) The complaining party shall present evidence first (the City, for purposes of II(A) or (B); the grievant, for purposes of II(B)) unless the Hearing Officer rules otherwise.
 - 5) Closing Statements of the parties. Closing statements by each party, if made, shall be less than ten (10) minutes in duration.
 - 6) The Board and/or the Hearing Officer may, at any time, ask questions of any witness designed to elicit information beneficial to the efficient, fair, and just disposition of the hearing.

X. Powers and Duties of the Board. The Board is the ultimate authority with respect to any and all matters contained in Indiana Code §§ 36-8-3-4 or 4.1, and shall have the authority to overrule any decisions made by the Hearing Officer at any point during the hearing. The Board shall decide all questions of fact and shall make specific findings of fact pursuant to Indiana Code § 36-8-3-4(e).

XI. Powers and Duties of the Hearing Officer. The Hearing Officer shall have the duty to decide questions of law and procedure in an effort to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He shall have all the powers necessary to that end, including the following powers:

- A. To rule upon offers of proof;
- B. To regulate the course of proceedings in the conduct of the parties and their representatives;

- C. To hear conferences for simplification of the issues, settlement of the proceedings, or any other proper purpose;
- D. To consider and rule orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings;
- E. To exclude people from the hearing;
- F. To take any other action consistent with the purpose of the law and consistent with these rules.

XII. Rules of Evidence

- A. The Indiana Rules of Evidence and the Federal Rules of Evidence are not strictly applied in proceedings before the Board. Notwithstanding, the Board and/or the Hearing Officer may look to the Indiana and Federal Rules of Evidence for guidance on determining a general evidentiary standard and any other issues not addressed in these rules.
- B. When an objection is made to the admissibility of evidence, the Board or the Hearing Officer shall rule on the objection. Additionally, the Board and/or the Hearing Officer may exclude inadmissible evidence on their own motion. All parties may note their exceptions on the record to any ruling or other action of the Board or Hearing Officer.
- C. In any proceeding before the Board, relevant and material evidence shall be admissible, but there shall be excluded such evidence as is incompetent, irrelevant, immaterial, unduly repetitious, or based upon speculation.
- D. The Board or the Hearing Officer shall rule on the admissibility of all evidence, and shall otherwise control the reception of evidence so as to confine it to the issues in the proceedings. The production of further evidence upon any issue may be ordered.
- E. No more than one attorney for each party or the pro se party shall examine or cross-examine a witness.
- F. A party may cross-examine a witness only upon the subject matter of his examination in chief.

XIII. Closing the Record

- A. The record shall close at the conclusion of the testimony of both sides and after closing statements of both sides. However, when additional exhibits or other evidence are to be filed, the record shall remain open for the sole purpose of receiving those items.
- B. The record shall include:
 - 1) All applications, charges, and requests seeking action by the Board;
 - 2) All orders, answers, replies, responses, objections, motions, stipulations, exceptions, pleadings, notices, certificates, proofs of service, and briefs in any matter of proceeding;
 - 3) All evidence received;
 - 4) A statement of all matters officially noticed;

- 5) All questions and proffers of proof, objections and rulings thereon;
- 6) All proposed findings and exceptions;
- 7) Any decision, opinion, or report by the Board or Hearing Officer, and any response thereto;
- 8) Any order of the Board designating the Hearing Officer;
- 9) A transcript of the hearing, if transcribed, by a certified shorthand reporter designated by the Board for the hearing; and
- 10) All exhibits offered.

APPROVED

Board of Public Safety

Date: 1/20/2021

Gulha Taylor

Dean Jones

Eddie Miller

[Signature]