

## 4A:4-6.2 Actions against disqualified persons

(a) A disqualification under N.J.A.C. 4A:4-6.1 may result in:

1. Rejection of examination application;
2. Refusal to test an individual;
3. Refusal to place a candidate's name on an eligible list;
4. Refusal to certify an eligible's name;
5. Removal of an eligible's name from the eligible list;
6. Removal from employment; or
7. Other appropriate action.

(b) See N.J.A.C. 4A:4-4.6A for disqualifications of certain persons returning from military service.

(c) Major disciplinary procedures shall be applicable to removal of an employee who is permanent or serving in a working test period.

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF LOCAL GOVERNMENT SERVICES

#### LOCAL FINANCE BOARD

#### Local Government Ethics Law

#### Readoption: N.J.A.C. 5:35

Proposed: October 21, 2013, at 45 N.J.R. 2295(a).

Adopted: March 12, 2014, by the Local Finance Board, Thomas H. Neff, Chair.

Filed: March 13, 2014, as R.2014 d.060, **without change**.

Authority: N.J.S.A. 40A:9-22.7.g.

Effective Date: March 13, 2014.

Expiration Date: March 13, 2021.

#### Summary of Public Comments and Agency Responses:

Public comments were submitted by: John Paff, President, Open Government Project, New Jersey Libertarian Party; Robert Wechsler, Director of Research, City Ethics, Inc.; Susan Scoblink-O'Neill; Barbara Sachau; and an anonymous commenter on behalf of Atlantic City Bitcoin, LLC, which are summarized below.

COMMENT: N.J.A.C. 5:35-1.2. John Paff, Susan Scoblink-O'Neill, and Barbara Sachau ask that the Local Finance Board (Board) relax N.J.A.C. 5:35-1.2, which requires confidentiality during the course of a preliminary investigation into a complaint, so that the public can get more timely information about ethics complaint filings. Commenters believe that no sound policy reason exists for conferring the current level of confidentiality upon allegations of misconduct by local government officers, particularly given their lower expectation of privacy than the average citizen. Information about complaints should be publicly disclosed after a finding of probable cause or a finding similar to that for public disclosure of New Jersey attorney ethics complaints under New Jersey Court Rule R.1:20-4(a) "when it has been determined that there is a reasonable prospect of finding ethical misconduct by clear and convincing evidence."

RESPONSE: The Board disagrees with the commenters' suggestion that substantial information on complaints become available for public disclosure at a point prior to either a notice of violation pursuant to N.J.A.C. 5:30-1.1(h) or a notice of dismissal pursuant to N.J.A.C. 5:30-1.1(i). The Board finds that information surrounding the complaint should not be disclosed prior to a formal investigation taking place. In contrast with the attorney ethics process referenced by the commenters, which requires "a reasonable prospect of a finding of unethical conduct by clear and convincing evidence" prior to a complaint issuing from a district [attorney] ethics committee, a notice of investigation may be issued after a preliminary investigation by Board staff only if the Board finds that the complaint is not outside its jurisdiction or frivolous, and that the complaint has a reasonable factual basis. This lesser standard recognizes that a formal investigation must be authorized and carried out before the Board can properly make a determination as to whether or not reasonable doubt exists as to whether the officer or employee is in conflict with the

provisions of the Local Government Ethics Law pursuant to N.J.S.A. 40A:9-22.9.

COMMENT: N.J.A.C. 5:35-1.2. John Paff, Susan Scoblink-O'Neill, and Barbara Sachau ask that the Board establish a deadline for the creation of an interactive online database allowing citizens to query information on pending and closed ethics matters with hyperlinks to filed case documents.

RESPONSE: Current human resource and programming limitations prevent the Board from implementing a database such as what has been proposed by commenters. However, in lieu of formal rules, Board staff will begin developing a process whereby more information can be shared on the internet.

COMMENT: Robert Wechsler states that the Board should address its position on each of the recommendations given by the Governor's Local Government Ethics Task Force, particularly the following:

1. Enforcement of the Local Government Ethics Law should be taken out of the hands of the Local Finance Board, which focuses on municipal finance rather than conflicts of interest, and instead be placed with a newly-created Local Government Ethics Board. The commenter believes that the Local Finance Board lacks transparency and has little visibility among municipal officials, citizens, or the press. Without visibility, the Board cannot be trusted or be effective in deterring misconduct by local officials. The Board does not appear to appreciate that advice and enforcement are more important for education than for anything else. It would be better to allow the current system to die, so that a visible and effective program can be established in its stead;

2. Eliminate local ethics boards;

3. Require each local government to appoint an ethics advisor and ethics liaisons, as each State agency does;

4. Create website content in a manner parallel to that of the State Ethics Commission;

5. Mandate ethics training for local government officials, with such training to be provided directly from a newly-created Local Government Ethics Board;

6. Address the Task Force's minority position that a new Local Government Ethics Board be placed with the State Ethics Commission, rather than the majority position that it be kept within the Department of Community Affairs. The commenter supports the minority position.

RESPONSE: Except as noted below, many of the commenter's statements do not come within the purview of the Board's rulemaking power; rather, the concerns raised would require legislative action in the form of statutory changes. As for the comment requesting the Board should pattern its website content after the State Ethics Commission, current resource limitations prevent the Board from implementing such an effort, though Board staff will begin developing a process whereby more information can be shared on the internet. Finally, the Board reiterates its commitment to the fair adjudication of all Local Government Ethics Law matters that come before it, and exercises this role pursuant to its statutorily-derived powers.

COMMENT: An anonymous commenter states that the current handling of ethics complaints is not effective and the procedures are unreasonable. Staff has said that there is no reason to pursue a penalty if violation is no longer occurring. The ethics system in its current state does not deter official misconduct, no matter how egregious, because everybody knows nothing will happen.

RESPONSE: Despite the assertion of the commenter, the Board does not have a rule or position that non-continuing violations will not be the subject of penalties. The Board establishes violations and penalties consistent with limitations established by law and prudence based on fact-based individual circumstances.

#### Federal Standards Statement

A Federal standards analysis is not required because the rules readopted under the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., are not subject to any Federal requirements or standards.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 5:35.