

NOTICE OF INTENT

Department of Civil Service Board of Ethics

Hearings and Pre-Hearing Procedures (LAC 52:I.Chapter 10 and Chapter 11)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to amend certain sections of the Rules for the Board of Ethics to clarify hearing procedures, pre-hearing procedures and motions for summary judgements and to reference current statutory provisions.

Chapter 10. Hearings

§1002. Initiating Declaratory Hearings

A. Declaratory hearings may be conducted, at the discretion of the board, upon submission of an application pursuant to R.S. 42:1141.6.

...

Chapter 11. Pre-Hearing Procedure

§1101. Discovery

A. Any public servant or other person who has been notified that he is to be the subject of a public hearing pursuant to the provisions of R.S.42:1141.4, et seq. and the trial attorney and general counsel for the board shall be entitled to conduct discovery regarding any matter, not privileged, which is relevant to the pending public hearing. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

...

§1102. Motions and Exceptions

A. ...

B. ...

C. Motion for Summary Judgment; Procedure before the Ethics Adjudicatory Board.

1. A motion for summary judgment may be filed by the Louisiana Board of Ethics or the Respondent without leave of the Ethics Adjudicatory Board and without an agreement by any other party to the use of summary judgment procedure, at any time before, during or after a public hearing on the merits.

2. The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. This procedure is favored and shall be construed to accomplish these ends.

3. Motions for Summary Judgment before the Ethics Adjudicatory Board shall be solely governed by the Louisiana Code of Governmental Ethics, the Rules for the Louisiana Board of Ethics and the Administrative Procedure Act.

4. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to a material fact and that the mover is entitled to judgment as a matter of law.

5. Documents that may be filed in support of or in opposition to the motion are:

- a. pleadings;
- b. memorandum;
- c. affidavits;

- d. depositions;
- e. answers to interrogatories;
- f. written stipulations;
- g. admissions;
- h. the Louisiana Board of Ethics' investigative file;
- i. all records and documents in the possession of the Louisiana Board of Ethics, which may be received in the form of copies or excerpts or by incorporation by reference, which shall be made available to the Respondent prior to the hearing on the motion for summary judgment for examination; and,
- j. any other documents that give probative value commonly accepted by reasonably prudent men in the conduct of their affairs.

6. The Ethics Adjudicatory Board may exclude incompetent, irrelevant, or immaterial, and unduly repetitious evidence.

7. All objections to evidentiary offers may be made and shall be noted in the record. When an objection to an evidentiary offer is sustained by the Ethics Adjudicatory Board, the subject evidence shall be considered proffered into the record with or without a motion.

8. The burden of proof rests with the mover.

- a. Nevertheless, if the mover will not bear the burden of proof at the public hearing on the merits on the issue before the Ethics Adjudicatory Board on motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense.
- b. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

9. The Ethics Adjudicatory Board may render summary judgment dispositive of a particular issue or defense in favor of one or more parties even though the granting of the summary judgment does not dispose of the entire case as to that party or parties.

10. The Ethics Adjudicatory Board may render or affirm summary judgment only as to those issues set forth in the motion under consideration by the Board at that time.

11. Notice of the hearing on the Motion for Summary Judgment shall be transmitted to the Louisiana Board of Ethics through the secured electronic file transfer system and to the Respondent through his counsel of record, or if no counsel of record, to the Respondent, by either email or regular mail to last known email or mailing address provided by the Respondent's counsel of record or Respondent to the Ethics Adjudicatory Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics ().

Family Impact Statement

The proposed rule changes have no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rule changes have no known impact on poverty, as described in R.S. 49:972.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

Small Business Statement

The proposed Rule should not have any known or adverse impact on small business as described in R.S. 49:956.6

Public Comments

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, Louisiana 70821, telephone (225) 219-5600, until 4:45 p.m. on January 10, 2020.

Kathleen M. Allen
Ethics Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

Person Preparing Statement: Kristy Gary Dept.: Civil Service

Phone: 225-219-5600 Office: Ethics Administration Program

Return Address: P.O. Box 4368 Rule Title: Motion for Summary Judgements
Baton Rouge, LA 70821

Date Rule Takes Effect: Upon Promulgation

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. **THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The estimated cost to implement the proposed rule change is \$168 in FY 19-20, which accounts for the cost to publish the Notice of Intent and the rule in the State Register. There are no additional estimated implementation costs or savings to state or local governmental units. The proposed rule seeks to amend certain sections to clarify hearing procedures, pre-hearing procedures and motions for summary judgements and to reference current statutory provisions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

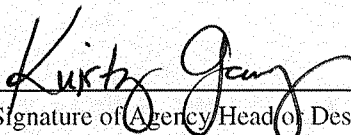
The proposed rule change will have no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed action will affect those persons who are the subject of charges pending before the Ethics Adjudicatory Board. It is not anticipated that this action will have a demonstrable effect on their costs and/or economic benefits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no anticipated effect on competition and employment.

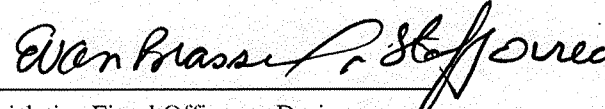


Signature of Agency Head or Designee

Kristy Gary/ Deputy Ethics Administrator
Typed Name & Title of Agency Head or Designee

12/10/19

Date of Signature



Legislative Fiscal Officer or Designee

12/10/19

Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Hearings and Pre-Hearing Procedures (LAC 52:I.Chapter 10 and Chapter 11). - The proposed rule provides clarifying language of current statutory provisions and additional procedures for motions for summary judgments.

See attached proposed rules for the underscore/strikethrough version.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

After August 15, 2008, the Board of Ethics (BOE) no longer conducts adjudicatory hearings. The Ethics Adjudicatory Board (EAB) conducts said hearings. The proposed rules are necessary to set forth and clarify procedures.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The only expense associated with the proposed rule change is the cost of publishing the Notice of Intent and the rules in the State Register.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) X _____ NO. If no, provide justification as to why this rule change should be published at this time.

The expense will be absorbed within the agency's existing budget.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 20	FY 21	FY 22
Personal Services	0	0	0
Operating Expenses	\$168	0	0
Professional Services	0	0	0
Other Charges	0	0	0
Equipment	0	0	0
Major Repairs & Constr.	0	0	0
TOTAL	\$168	0	0
POSITIONS (#)	0	0	0

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The above cost represents the cost to publish the notice of intent and the rules in the State Register.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 20	FY 21	FY 22
State General Fund	\$168	0	0
Agency Self-Generated	0	0	0
Dedicated	0	0	0
Federal Funds	0	0	0
Other (Specify)	0	0	0
TOTAL	\$168	0	0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, the agency does have sufficient funds to publish the items in the State Register.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed action will not have a fiscal impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

Not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 20	FY 21	FY 22
STATE GENERAL FUND	0	0	0
AGENCY SELF GENERATED	0	0	0
RESTRICTED FUNDS*	0	0	0
FEDERAL FUNDS	0	0	0
LOCAL FUNDS	0	0	0
TOTAL	0	0	0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase in revenues is anticipated.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The proposed action will affect those persons who are the subject of charges pending before the Ethics Adjudicatory Board. It is not anticipated that this action will have a demonstrable effect on their costs and/or economic benefits.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

The proposed action will have no impact on receipts and/or income from these groups.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed action should not affect competition and employment.

Title 52
ETHICS
Part I. Board of Ethics
Chapter 10. Hearings

§1002. Initiating Declaratory Hearings

A. Declaratory hearings may be conducted, at the discretion of the board, upon submission of an application pursuant to R.S. 42:1141.16.

Chapter 11. Pre-Hearing Procedure

§1101. Discovery

A. Any public servant or other person who has been notified that he is to be the subject of a public hearing pursuant to the provisions of R.S. 42:1141(E)4, et seq. and the trial attorney and general counsel for the board shall be entitled to conduct discovery regarding any matter, not privileged, which is relevant to the pending public hearing. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

...

§1102. Motions and Exceptions

A. Motions and exceptions may be made before, during, or after a public hearing.

B. Motions and exceptions made before or after the public hearing shall be filed with the appropriate panel of the Ethics Adjudicatory Board. Contradictory motions and exceptions shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefore.

C. ~~A motion for summary judgment may be filed by either the respondent or the trial attorney(s)~~ Motion for Summary Judgment; Procedure before the Ethics Adjudicatory Board.

1. A motion for summary judgment may be filed by the Louisiana Board of Ethics or the Respondent without leave of the Ethics Adjudicatory Board and without an agreement by any other party to the use of summary judgment procedure, at any time before, during or after a public hearing on the merits.

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- a. pleadings;
- b. memorandum;
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- d. depositions;
- e. answers to interrogatories;
- f. written stipulations;

Underscore/Strikethrough version of the proposed rule for the Board of Ethics.

- g. admissions;
- h. the Louisiana Board of Ethics' investigative file;
- i. all records and documents in the possession of the Louisiana Board of Ethics, which may be received in the form of copies or excerpts or by incorporation by reference, which shall be made available to the Respondent prior to the hearing on the motion for summary judgement for examination; and,
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AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics ().

OFFICE OF THE STATE REGISTER INSERTION ORDER (eff.08/02)

Claiborne Building 1201 North Third Street Suite 3-220 Post Office Box 94095
Baton Rouge, LA 70804-9095 (225)342-5015 FAX (225)342-0284

(SUBMIT A SEPARATE INSERTION ORDER PER DOCUMENT)

EMERGENCY RULE NOTICE OF INTENT RULE POTPOURRI

REFER TO INSTRUCTIONS ON REVERSE SIDE

This is your authority to publish in the (month) December, 2019 *Louisiana Register* the document indicated above.

Louisiana Board of Ethics

Office/Board/Commission promulgating this document

Kathleen M. Allen

(name) (title)
Name and title of person whose signature will appear in the publication (at the end of the document)

Department of Civil Service

Department under which office/board/commission is classified

Kristy Gary

225-219-5600 225-381-7271

(name) (phone) (fax)
Name, phone number, and FAX number of person to contact regarding this document

kristy.gary@la.gov

E-mail address of contact person

Motion for Summary Judgments

Short descriptive listing for this document to be used in the *Louisiana Register's* TABLE OF CONTENTS/INDEX

Chapter 11 amend MSJ

File name

Kristy Gary

Signature of Agency Head or Designee

Kristy Gary, Deputy Ethics Administrator

Print Name and Title of Agency Head or Designee

Important: If submitting both an Emergency Rule (ER) and a Notice of Intent (NOI) to be published this month, AND if the rule text in the ER is identical to the rule text in the NOI, check here:

CERTIFICATION OF AVAILABLE FUNDS

DOCUMENT # _____

ISIS AGENCY: I certify the availability of fiscal year 19-20 appropriated funds for the payment of the above referenced publication and authorize the processing of an Interagency Billing with the following coding on the 30th of the month of the publication. Attach supplemental sheet for additional lines of coding.

562

5621

4960

AGENCY

ORGANIZATION #

OBJECT

SUB-OBJECT

REPORTING CATEGORY

NON-ISIS AGENCY: I certify the availability of fiscal year _____ appropriated funds for the payment of the above referenced publication and agree to place corresponding invoice in line for payment upon receipt.

Billing Address for Agencies:

Louisiana Board of Ethics

Agency Name

P.O. Box 4368

Street Address or Post Office Box

Baton Rouge LA

70821

City

State

Zip Code

Kristy Gary 225 219 5600
Signature of Agency Head or Designee - Phone #

Lines/Other Charges _____ Typesetting \$ _____ TOTAL \$ _____