

BROWARD COUNTY CONE OF SILENCE ORDINANCE
Section 1-266, Broward County Code

COMPLAINT PROCEDURE

1. Anyone who believes that a potential vendor to Broward County or a representative of such vendor has violated the requirements of Broward County's "Cone of Silence" as described in Section 1-266 of the Broward County Code of Ordinances may file a written complaint with the Office of Professional Standards, 115 South Andrews Avenue, Room 426, Fort Lauderdale, Florida 33301.

2. The written complaint must be typed or legibly hand-written on Broward County's "Cone of Silence Complaint Form" and must specify the following:

The name, address and telephone number of the complainant and, if a corporation, partnership, or other artificial entity, the name, address, and telephone number of the individual making the complaint.

The name, address, and telephone number of the alleged violator and, if a corporation, partnership, or other artificial entity, the name, address, and telephone number of the individual alleged to have committed the violation.

The specific language of the Cone of Silence Ordinance which the complainant believes was violated.

A detailed narrative of the violation which the complainant believes was committed, including the dates, names, and addresses of persons involved in the violation, and all known witnesses, if any.

Copy (or the identification and location) of all documents known to the complainant which support or demonstrate that the alleged violation occurred.

The Complaint Form can be obtained on the Internet by accessing the Office of Professional Standards' Agency page at www.broward.org/investigation.htm or the Purchasing Division's Agency page at <http://www.broward.org/purchasing>, or by contacting the Office of Professional Standards at (954) 357-7896.

3. Upon receiving a complaint, the Office of Professional Standards shall provide written notice of its impending investigation to the vendor and the vendor's representative who is alleged to have committed the violation.
4. The investigation will be completed within thirty (30) days from the time the written complaint is received, unless it is determined by the Director of the Office of Professional Standards that additional time is

necessary to determine the facts relevant to the complaint. Upon completion of fact-finding, the Office of Professional Standards shall produce a written determination containing findings, conclusions, and the amount of fine imposed, if any. A copy of this determination shall be provided to the County Administrator, the County Attorney, the Purchasing Director, the complainant, and to the vendor (and also to the vendor's representative who is alleged to have violated the Code of Ethics, if any).

5. Fines imposed pursuant to Section 1-266(g) and (i) shall be paid to the Office of Professional Standards. When such fine is imposed, it shall be paid within thirty (30) calendar days unless the vendor requests a hearing. If a hearing is requested and the fine is upheld, it shall be paid within three (3) business days after the hearing officer's final order.
6. A vendor has the right to request an administrative hearing before a County-appointed hearing officer if the vendor disagrees with the determination by the Office of Professional Standards. The request for a hearing must be in writing and sent to the Broward County Purchasing Division to the attention of the Purchasing Director within ten (10) calendar days after the determination.
7. Upon timely receipt of a written request for a hearing, the Purchasing Director shall schedule a hearing before a County-appointed hearing officer. At the hearing, the vendor shall be given the opportunity to prove that the determination of the Office of Professional Standards should be overturned.
8. **Hearing Procedure.** The procedure for a hearing required by Section 1-266 shall generally be in accordance with the requirements of Section 21.120 of the Broward County Procurement Code and as follows:
 - a. The Purchasing Director shall cause a notice of hearing to be served upon the vendor, which notice shall state the time and place of the hearing. The notice of hearing shall be sent by certified mail, return receipt requested, to the mailing address of the vendor.
 - b. The parties shall have the right to be represented by counsel, to call and examine witnesses, to introduce exhibits, to examine opposing witnesses on any relevant matter, even though the matter was not covered under direct examination, and to impeach any witness regardless of which party first called the witness to testify.

- c. In any hearing before the hearing officer, irrelevant, immaterial or unduly repetitious evidence shall be excluded. 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 in the courts of Florida.
- d. The hearing officer shall be able to compel the attendance of witnesses, if requested by a party, by issuance of an administrative subpoena served by certified mail or by any other process and service authorized by law. The hearing officer shall determine whether there has been a violation of the ordinance and may overturn the determination of the Office of Professional Standards only if he or she determines that the findings are not in accordance with the Cone of Silence Ordinance or are not supported by substantial evidence as a whole. Substantial evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion. When all parties are represented by counsel, upon a written motion made at least ten (10) days prior to when a hearing is scheduled, the hearing officer may allow local depositions of the parties who have personal knowledge of the protest and who will be unavailable to testify at the hearing. The hearing officer may grant the motion of any person having standing under Florida law to intervene in the proceedings. The hearing officer must rule upon any preliminary motion to intervene before the commencement of a hearing on the merits. Such motions shall be made at least ten (10) days prior to the date the hearing is scheduled. The motions may be argued at the final hearing or at a motion hearing noticed prior to the date of the final hearing. When all parties are represented by counsel, the hearing officer may also allow each party one (1) written request for production of documents, on an expedited basis, prior to the hearing and may issue subpoenas duces tecum for witnesses to bring documents to the hearing. All motions must be made and served upon all parties at least ten (10) days before a hearing on the merits is scheduled.
- e. Within thirty (30) days after the hearing on the merits, the hearing officer shall complete and submit to the County and the person requesting the hearing a final order containing findings of fact and conclusions of law as to the issues presented at the hearing. The hearing officer shall uphold or reverse the determination of the Office of Professional Standards.
- f. This procedure should be concluded prior to the institution of any civil action regarding the same subject matter. Appeal from the decision of the hearing officer shall be by certiorari to the circuit court in accordance with the Florida Rules of Appellate Procedure

and shall be based on the record established before the hearing officer.

- g. Upon timely and proper written motion of any party, the hearing officer may, in the exercise of sound professional discretion, award costs to the prevailing party if the hearing officer finds there was a complete absence of a **justiciable** issue of either fact or law raised by the institution and maintenance of the protest (or its defense). The hearing officer shall only apply Florida Statutes, Section 57.105 and case law decided under this statute in making such determination. Costs under this subsection shall include the hearing officer's fee; costs of the hearing room; the copying costs for the hearing; any costs of discovery authorized in accordance with this section of the Code; postage for subpoenas or other letters of communications sent during the course of the hearing; and, witness fees. No other item of costs may be considered.
 - h. Hearings shall be in Broward County, Florida, and Florida law shall apply.
- 9. A request for hearing on a Cone of Silence violation shall not operate to stay any County solicitation, procurement process, or the award of a contract.
 - 10. The Office of Professional Standards will maintain a system to track all vendors and potential vendors who have violated the County's Cone of Silence.

Cone of Silence Complaint Procedure.doc