

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: September 21, 2016

MEMORANDUM

TO: Ethics Board

FROM: Michael P. May, City Attorney

RE: Hurtgen v. McManners, Legistar File No. 44164
Procedures for Hearing on Thursday, September 22, 2016

You should have received a number of items from the parties. Our office will prepare packets including those items for your hearing on Thursday.

When hearing a matter such as this, the Board acts in a quasi-judicial capacity. The Chair is expected to run the hearing. I am available for legal advice, but I do not run the hearing. Given the materials filed, I anticipate proceeding in this manner:

1. The Board should hear from the attorneys on the Motion to Dismiss filed on behalf of Mr. McManners. The attorney for Mr. McManners will be heard first. This raises legal questions that should be decided on the face of the filings. This should be heard first because, to the extent the Board decides that any part of the complaint should be dismissed, then no testimony or evidence would be heard on that claim.
2. After that, assuming some or all of the complaint remains in issue, the complainant, Ms. Hurtgen will be allowed to present evidence, including testimony and exhibits. I propose that all written documents be admitted into evidence unless there is an objection, rather than requiring a party to identify and explain the documents. If testimony is to be presented, the person testifying will be placed under oath. Following questions by the attorneys, Board members may ask questions.
3. After Ms. Hurtgen has finished her case, Mr. McManners will present his case in the same manner, with documents accepted unless there are objections, and testimony with questions.
4. Following the presentation of the case, the Board will need to decide if it wishes to deliberate in closed session. If so, I will guide the Board through the proper motions to do so. An amended notice will be issued today to allow for a closed session. In any event, the Board will have to vote on the complaint and explain its reasoning. Our office will be tasked with drafting the decision, to be approved at a later meeting.

CC: Greg Everts
Jessica Kramer