

**MINUTES OF THE**  
**SANTA FE COUNTY**  
**ETHICS BOARD MEETING**

**Santa Fe, New Mexico**

**October 25, 2013**

This meeting of the Santa Fe County Ethics Board was convened by Chair Adair Waldenberg, on the above-cited date at approximately 3:05 p.m. at the Santa Fe County Legal Conference Room, County Administration Building, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

**Members Present:**

Adair Waldenberg, Chair  
Estevan Baca, Vice Chair  
William Peyton George  
David Mittle  
Leon Young

**Member(s) Excused:**

None

**Others Present:**

Willie Brown, Assistant County Attorney  
Bernadette Salazar, County HR Director  
Lisa Roybal, Manager's Office

**III. Approval of Agenda**

Upon motion by Mr. Baca and second by Mr. George the agenda was unanimously [5-0] approved with the addition of congratulations to Lisa Roybal on her recent marriage and gratitude for her assistance to the Board members.

**IV. Approval of Minutes: September 26, 2013**

Mr. Baca moved to approve the minutes. Mr. George seconded and the motion carried unanimously [5-0].

V. **Continuation of Review, Discuss and Possibly Vote on Recommending Amendments to the Board of County Commissioners Regarding the Santa Fe County Code of Conduct Ordinance Including the Role of the Contract Attorney and Employees in the Code**

Continuing on page 15, G, Mr. Brown identified this as the juncture where the CCEO (County Contract Ethics Official) makes a recommendation. H is not a hearing, rather it is determined whether a hearing should take place or dismiss the complaint. He referred to a form letter "Re: Action on Ethics Complaint Whether to Proceed or to Dismiss." The form would be handled later in the meeting.

On page 16, paragraph 10 "after deliberating on the merits of the case before them, the Ethics Board shall issue a written decision consistent with the their vote and containing findings of fact and conclusions of law, which may impose..."

Mr. Mittle expressed his objection to the entire section stating it was misplaced and it appeared that the section tried to reinvent something that has already been invented. He advocated the utilization of the New Mexico Administrative Procedures Act that contains rules providing for the due process rules that should be afforded in any administrative hearing.

Mr. Brown said the rules presented come from active rules of state agencies. He commented that he was not aware of any agencies that used the New Mexico Administrative Procedures Act and it can only be used if the statute allows for its use.

Mr. Mittle said using the Administrative Procedures Act would insure completeness and the other rules haven't been hashed out by the courts.

Mr. Brown said the case law in due process is that due process exists within each state or government and that there's no pure body of what is due process. It depends on the agency you are before. He recognized that appellant rights are not listed and are instead a statutory concern.

Mr. Mittle moved to defer discussion and vote on J as a separate agenda item. Mr. Young seconded.

Chair Waldenberg clarified the motion that in tabling this the Board would have access to the Administrative Procedures Act as well as the Employees Handbook

The motion carried by unanimous voice vote.

Chair Waldenberg asked that the rules include whether the respondent is permitted representation or counsel. Mr. Mittle noted that the Administrative Procedures Act states "any party may be represented by counsel ..."

**Page 15 including staff recommended additions not including J or the form letter**

Motion: Mr. Baca

Second: Mr. George

Vote: Approved by unanimous [5-0] voice vote.

**Page 16, Section 24:**

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B. Strike: "and an alternate member shall be seated when the need arises."

C. Strike: "as they relate to Elected Officials, Appointed Officials and Volunteers of the Santa Fe government"

C. Add: The Ethics Board shall also have authority to make recommendations to the Board of County Commissioners regarding the frequency, the wording and the categories of those individuals best served by ethics training.

J. Add: Volunteer

A discussion ensued on K, regarding approval of the report:

K: Add: Prepared by the Chair and approved by the Board and shall include updating activities of the Board.

Referring to L, Mr. Brown offered to provide a definition of "just cause" for removal of a Board member.

**Section 24 excluding L and K.**

Motion: Mr. Young

Second: Mr. Mittle

Vote: Approved by unanimous [5-0] voice vote.

There were no comments regarding Section 25. Mr. Brown noted that "intimidation" and language from the Employees Handbook was added to Section 26.

Concern was raised regarding the term "knowingly" in 26.B and Mr. Brown said the term takes it out of the context of negligence.

**Sections 25 and 26:**

Motion: Mr. Baca

Second: Mr. George

Vote: Approved by unanimous [5-0] voice vote.

Under Section 27, B. 1.b. "official's household" is language pulled from the 2011 amendment. Chair Waldenberg expressed her concern and advocated official's family since "family" is defined in the ordinance and includes household members as well as others.

**Section 27 B. 1.b. "...the official's household family..."**

Motion: Mr. Mittle

Second: Mr. Young

Vote: Approved by unanimous [5-0] voice vote.

Section 27.B.2. "The Elected Official or Appointed Official recusing himself or herself shall disclose the specific reason for a recusal contemporaneous with the recusal" is the BCC's current practice and informs the constituents why they may not be voting on an item. Mr. Mittle put forward that the due process rights of the accused are violated with someone stating a reason for recusal.

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Mr. Brown suggested a situation where the Ethics Board member filed the complaint and it is clearly appropriate to state that on the record. The section strengthens the County's policy regarding transparency. There were no further comments on this issue.

Correction 27 B.1.b – lower case “financial interest” was accepted.

**Section 27 as amended**

Motion: Mr. Baca

Second Mr. Mittle

Vote: Approved by unanimous [5-0] voice vote.

Section 28 – no changes.

Section 29 – renumber the section. Renumbered item 4 was recommended for removal by Ms. Garrity and Mr. Brown agreed.

Mr. Mittle asked whether the Board had jurisdiction to find someone guilty of a misdemeanor or any criminal statute. Mr. Brown noted this language is in the ordinance and the County has imposed criminal sanctions for violation of ordinances.

It was noted that item 4 cites a 1909 amendment, occurring before New Mexico was a state.

**Section 29 as amended** – renumbered and deletion of 4.

Motion: Mr. Mittle

Second Mr. George

Vote: Approved by unanimous [5-0] voice vote.

**Section 30 adds 2011-9**

Motion: Mr. Baca

Second: Mr. Young

Vote: Approved by unanimous [5-0] voice vote.

**FORM** – Action on Ethics Complaint Whether to Proceed or to Dismiss

Mr. Brown confirmed that the form is not part of the ordinance and can be amended at will. He suggested that all the bullet points be contained within the ordinance (Section H) as basis to reject a complaint.

The following corrections were offered:

Strike “too trivial”

Add a clause regarding the time period

Add: Dismiss some or all of the complaint because...

Add: a “cc: to the subject of complaint

The order of the bullets was altered to start with the last bullet and then continue sequentially as presented.

There was consensus to re-review and improve the form at the next meeting with an eye towards developing two forms; one for dismissal and the one for conducting a hearing.

**Section 14:** Use of County Property or Resources for Political Purposes

Mr. Brown noted the only change he was proposing was the inclusion of “of” on the last line. The subject of political discussion at county facilities, i.e., senior centers, is under review by the Legal Department.

To accept the inclusion of “of”

Motion: Mr. Baca.

Second: Mr. George

Vote: Unanimous [5-0]

**Contract Attorney**

For the purpose of balance, Mr. Young said that the Board should have the benefit of independent counsel during meetings.

Chair Waldenberg said the current definition is limited to when there is a case. She remarked that Ms. Garrity’s input was very valuable and in her absence greatly missed.

Mr. Brown said there is conflict of interest in the Ethics Official also serving as the Board’s contract attorney.

There was Board consensus that they desired the right to use outside counsel and suggested that be included in Section 24.

Mr. Brown pointed out that the County’s Legal Department serves as counsel for all the County’s committees, commissions and boards. The department does not serve as anyone’s personal attorney – rather they serve the County.

Mr. Mittle moved to direct staff to draft language that would amend the ordinance granting the Board, upon their request, to seek the advice of an independent attorney. Mr. Young seconded.

Under discussion, Mr. Brown noted that this would be the only County board to have its own attorney.

The motion passed by majority vote with Chair Waldenberg, Mr. Mittle and Mr. Young voting for, Mr. George voting against and Mr. Baca abstaining.

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## **VI. General Discussion Regarding Establishing a Hotline**

Mr. Young said a hotline is an important tool and needs to be secure, anonymous, and with a code given to track the complaint. He noted that all federal agencies have hotlines. The idea is to improve ethics and provide a resource without fear of retribution.

Mr. Baca noted the State has a hotline and Mr. Brown added it was initiated by the State Auditor. Ms. Roybal said complaints are then referred to the appropriate agency. Ms. Salazar said County employees can lodge a complaint on that hotline. She said a representative from the State Auditor's office conducted training and discussed the hotline in detail. She confirmed that HR receives anonymous complaints that are investigated.

Mr. Baca recalled discussing this issue in the past and the concern was that there was no mechanism to obtain a sworn complaint.

Ms. Roybal informed the Board that the County has a general website email address that goes to a webmaster where anonymous comments are routinely received regarding BCC meetings and other County activities. The webmaster forwards the email to the appropriate department.

Chair Waldenberg introduced a motion directing HR to publish the State Auditor's hotline number and the County website within the Ethics training materials as an avenue for filing an anonymous complaint. Mr. Mittle seconded and the motion passed without opposition.

It was requested that available data regarding complaints be compiled for the Board's review. Ms. Salazar noted that the complaints predominantly have to do with speeding county vehicles and staff does look at trends and how to resolve those issues. Chair Waldenberg asked staff to also provide how and to whom complaints are sent from the webmaster and the State's hotline.

In an effort to better educate the Board regarding the types of complaints the County receives, Mr. Mittle asked for general complaint data/descriptions, if available, and the average number of complaints the Auditor's hotline receives.

## **VII. Matters from the Board**

The next meeting was scheduled for December 4, 2013 at 3 p.m.

## **VIII. Matters from the Public**

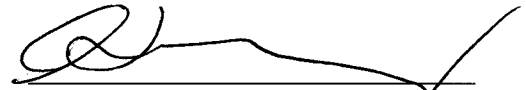
None were presented.

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**IX. Adjournment**

Upon motion and second, Ms. Waldenberg declared adjourned at 4:50 p.m.

Approved by:




Adair Waldenberg, Chair  
Santa Fe County Board of Ethics

ATTEST TO:

COUNTY CLERK

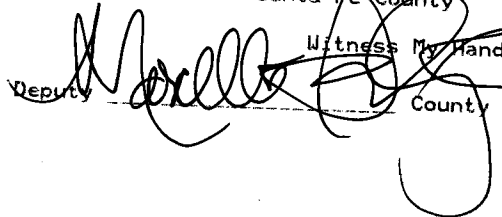
Respectfully submitted by:

  
Karen Farrell, Wordswork

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

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I Hereby Certify That This Instrument Was Filed for  
Record On The 6TH Day Of December, 2013 at 10:11:37 AM  
And Was Duly Recorded as Instrument # 1724744  
Of The Records Of Santa Fe County

  
Deputy \_\_\_\_\_ Witness My Hand And Seal Of Office  
Geraldine Salazar  
County Clerk, Santa Fe, NM

CLERK RECORDED 12/06/2013