

V. **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**

Chair Waldenberg said the overriding concern at this time is whether to include employees under the jurisdiction of the Ethics Board. Mr. Baca stated that after reading the minutes it was clear to him employees were not to be included. He would not be inclined to make a contrary recommendation to the BCC. Mr. Mittle said he understood the County's concern but his preference would be to let the BCC make the decision. Mr. George said it appears their role is severely restricted

Mr. Brown noted that the County Manager came to the last meeting to share her experience with the BCC, that it was the intent that employees be subject to the handbook.

Mr. Mittle asked what the resistance was to asking the Commissioners for their judgment on the issue. It seemed to him they were more concerned about ex parte communications and finances.

Chair Waldenberg noted it would be preferable to present a clean copy of the amended ordinance so it is important to settle this matter. She was persuaded that the ordinance was initiated to close loopholes regarding who is covered by ethical standards. The union members who spoke implied the HR process is working. She asked to defer a vote until Mr. Young arrives.

Mr. Mittle advocated asking the BCC their thoughts about the Ethics Board's role in things like training or a hot line. Chair Waldenberg said there is language in the ordinance that touches on that.

Mr. Brown recommended dealing with the amendments on first 12 pages and vote page by page. Section 23 can be voted on paragraph by paragraph.

[Mr. Young joined the meeting.]

Chair Waldenberg recapped the discussion with committee members voicing their opinions regarding including employees under their purview. Mr. George said he did not see what was to be lost leaving it to the BCC to decide.

Mr. Young said HR was the employees' first point of contact and if they are dissatisfied with the outcome they should have recourse to appeal. A hot line would be useful as well. He pointed out that sometimes in doing the right thing that person becomes the victim.

Ms. Salazar indicated any employee can complain about policy violations. Appeal processes are in place. If an employee does not feel comfortable bringing a complaint to

HR they can go to the County Manager's Office. There are non-retaliation policies as well. She said the employee may not be pleased with the disposition following a complaint but that does not mean the system has failed.

In response to Chair Waldenberg's question about complaints from the public, Ms. Salazar stated an investigation is conducted no matter the source. The process seems to be working.

Mr. Young said if someone feels they have not been dealt with fairly they should be able to appeal to a neutral party. Ms. Salazar said there are appeals, even in disciplinary or grievance cases, which can go to State Labor Board arbitration.

Mr. Brown pointed out the County gets many constituent complaints which go to the Commissioners and their liaisons.

Mr. Brown said he was not sure if "appeal" is the proper word for the process an employee follows. Ms. Salazar said the complaint is not reinvestigated but there are avenues that can be pursued. Mr. Brown noted there are whistleblower protection measures.

Mr. Brown gave the County's position per the County Manager. The ordinance came about to close the gap for issues involving elected officials who commit criminal or an unethical act.

Mr. Mittle said he was speaking strictly about ethical issues involving employees, not employment matters. He gave the example of a Commissioner asking an employee to do campaign work. This should be removed from the political arena.

Ms. Salazar said employee ethical issues, such as conflicts of interest are addressed in the handbook. In the issue mentioned by Mr. Mittle, the complaint is lodged against an elected official, so that is within the Ethics Board's jurisdiction. If the complaint is against another employee, then it would revert back to HR. Additionally, each department may have standard operating procedures to address specific situations that arise.

Mr. Mittle asked if it would not be more transparent if the Ethics Board were involved. Ms. Salazar said state law covers confidentiality and disciplinary actions. Employee rights and union contracts have to be taken into account.

Mr. Young said a hot line would provide another avenue. A new employee might not want to go to HR. He gave the example of an employee being asked to pick up dry cleaning and not feel comfortable refusing or complaining. Ms. Salazar said they take anonymous complaints every day and they are investigated.

Mr. Aaboe asked what difference there was between submitting an anonymous complaint to HR and applying to the Ethics Board. Mr. Young said someone should be able to go where they feel comfortable.

Mr. Brown stressed that the employees' handbooks covers the Code of Ethics. Chair Waldenberg added they are required to sign off that they have read and understand the rules and regulations.

Mr. Mittle made a motion to bring forward to the BCC a request for clarification of whether the Ethics Board has purview to investigate complaints regarding ethical matters brought by employees against employees, or if an ethical violation is brought directly to the Ethics Board it is the Ethics Board's responsibility to turn it over to HR. Mr. Young seconded.

Chair Waldenberg asked if the ordinance were changed like that it would be a violation of the employee handbook and Ms. Salazar said it would. Mr. Brown said grievance procedures have been negotiated with the unions.

Mr. George and Mr. Baca said the ordinance is clear on the matter of jurisdiction. Mr. Young said it may be clear but Mr. Mittle's subtext needs to have a current clarification. Mr. Brown said they could go forward on the assumption employees are not included, adopt a modified ordinance, and then ask for clarification.

The motion failed 2-3 with Mr. Mittle and Mr. Young voting in for the motion and Chair Waldenberg, Mr. George and Mr. Baca voting against.

The following amendments to the ordinance were discussed and voted upon.

Page 2, Section 4.B, underlined language, comma to go inside quotation marks.

Motion: Mr. Mittle

Second: Mr. Baca

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

Page 3, Mr. Brown explained these were pursuant to changes in the Governmental Conduct Act. Sections 4. H, L and N are already in the 2011 Code by amendment.

Motion: Mr. Mittle

Second: Mr. George

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

Page 5 was already amended, as was the top of page 6, the continuation of Section 8, due to changes in the Governmental Conduct Act.

Mr. Young questioned Section 8.A, which specifies "for pay." He asked what if the representation is done without pay. Mr. Brown said then the person would be a volunteer.

This language follows the Governmental Conduct Act. The question then arose concerning pro se representation. Mr. Brown said according to an opinion expressed to him by the Attorney General/Civil Division that that would be a violation. However, that could be an interpretation of the statute and he recommended not including a provision.

Motion: Mr. Mittle
Second: Mr. George
Vote: Approved by unanimous [5-0] voice vote.

Page 4, Section 4.T is also in the 2011 amendment.

Motion: Mr. Mittle
Second: Mr. George
Vote: Approved by unanimous [5-0] voice vote.

Page 6, Section 10 is in the 2011 amendment.

Motion: Mr. Mittle
Second: Mr. Baca
Vote: Approved by unanimous [5-0] voice vote.

Page 7, no changes. Page 8, no changes. Page 9 includes language from the Governmental Conduct Act. On Section 17.B, Mr. Mittle suggested the addition of "whichever is less" to follow "local statute, law, rule or ordinance." There was consensus that it was understood the stricter interpretation would govern.

Motion: Mr. Baca
Second: Mr. George
Vote: Approved by unanimous [5-0] voice vote.

Page 10, no change. Page 11, no changes.

Motion: Mr. George
Second: Mr. Young
Vote: Approved by unanimous [5-0] voice vote.

Page 12, the language change comes from the 2011 amendment.

Motion: Mr. Young
Second: Mr. Baca
Vote: Approved by unanimous [5-0] voice vote.

Page 13, Section 23, Chair Waldenberg pointed out that the definition of CCEO should occur at the first reference (23.A), not on page 14 (23.B). Mr. Brown said 23.A came from committee consensus that a board member may make a complaint but has to recuse

him or herself in writing, as a due process consideration. The comma after "communications" should be removed in 23.A.2

Motion: Mr. Baca
Second: Mr. George
Vote: Approved by unanimous [5-0] voice vote.

On Section C, "Provided however that" is to be deleted, and will read, "All complaints addressed to the County Ethics Board or a member of the board..."

Motion: Chair Waldenberg moved to use the second version with the above changes.
Second: Mr. Mittle
Vote: Approved by unanimous [5-0] voice vote.

Page 14, 23.B, Mr. Brown said the second version reflects other means of communication.

Motion: Chair Waldenberg moved to adopt the second version of Section B.
Second: Mr. Mittle
Vote: Approved by unanimous [5-0] voice vote.

Page 14, Section 23.D, Mr. Brown said this concerns due process. He added there has to be some confluence on how the CCEO communicates results of the investigation. This appears in H and he has developed a form for presenting recommendation to dismiss or proceed. Mr. Mittle suggested it should read: "The CCEO shall never discuss nor share with members of the Ethics Board any sworn complaints, except as provided in subsection H."

Motion: Mr. Mittle
Second: Mr. Young
Vote: Approved by unanimous [5-0] voice vote.

Page 14, Subsection E, Mr. Brown said this reflects that complaints against employees go to HR.

Motion: Mr. Mittle
Second: Mr. George
Vote: Passed 4-1 with Mr. Mittle voting against.

Page 15, Subsection F, Mr. Brown stated this pertains to circumstances where the Ethics Board reverses a dismissal.

Motion: Mr. Baca
Second: Mr. George
Vote: Approved by unanimous [5-0] voice vote.

Page 15, Subsection G, Mr. Brown said there is very little change from the original language.

Motion: Mr. Mittle

Second: Mr. Baca

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

Page 15, Subsection H, Mr. Young suggested removing the word "available." Mr. Brown said this will give the committee more flexibility. He noted there are no timelines mentioned in the ordinance. Mr. Young recommended using "next meeting following completion of the investigation." Mr. Brown advised against boxing themselves in, and suggested the word "convenient." Chair Waldenberg suggested "a meeting soon after the completion." Mr. Baca spoke for "next meeting" since this is a priority.

Motion: Mr. Young moved to delete "available."

Second: Mr. Mittle

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

Page 15, Subsection H, Mr. Brown suggested the second sentence should read, "Prior to any public hearing, at its next meeting after completion of the investigation, the County Ethics Board shall review the CCEO report..." Chair Waldenberg asked that "recommendations" be singular. Mr. Brown said this section determines whether a hearing should take place. He distributed a form [Exhibit 1] that would obviate the temptation for discussion.

No vote took place on Subsection H.

IX. Matters from the Board

Chair Waldenberg said she would start preparing a quarterly report and refer to the discussion regarding inclusion of employees. She asked board members to send her an email with suggestions of what should be included in the quarterly report.

There was consensus to hold the next meeting on October 25, 2013 at 3:00 and to take up matters not discussed on the current agenda.

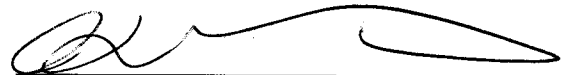
X. Matters from the Public

None were presented.

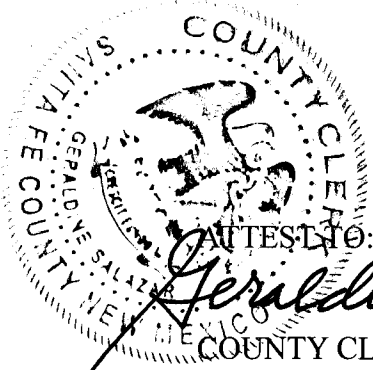
XI. Adjournment

Upon motion and second, Ms. Waldenberg declared adjourned at 5:00 p.m.

Approved by:



Adair Waldenberg, Chair
Santa Fe County Board of Ethics



ATTEST TO:
Geraldine Salazar
COUNTY CLERK
8-14-2014

Submitted by:

Debbie Doyle, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

ETHICS BOARD MINUTES
PAGES: 9

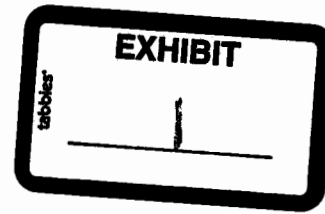
I Hereby Certify That This Instrument Was Filed for
Record On The 18TH Day Of August, 2014 at 10:08:31 AM
And Was Duly Recorded as Instrument # 1743738
Of The Records Of Santa Fe County

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

RECORDED 89719000

Adair Waldenberg
Chair
Santa Fe County Board of Ethics

Estevan Baca
Vice Chair
Santa Fe County Board of Ethics



David Mittle
Ethics Board Member
Santa Fe County Board of Ethics

Leon Young
Ethics Board Member
Santa Fe County Board of Ethics

William Peyton George
Ethics Board Member
Santa Fe County Board of Ethics

[DATE]

[COMPLAINANT]

Re: ACTION ON ETHICS COMPLAINT WHETHER TO PROCEED OR TO DISMISS

Dear Mr./Ms. [NAME]:

Your complaint, together with the report from the County Contract Ethics Office, was delivered to the Ethics Board on _____. After reviewing these documents and voting on whether to proceed to a hearing or dismiss the complaint, this Board has decided to:

- Dismiss the complaint because it did not state a claim under the Santa Fe County Code of Conduct in that the conduct complained of does not constitute a violation of the Code.
- Dismiss the complaint because it was not signed by the complainant.
- Dismiss the complaint because it was not sworn to by the complainant.
- Dismiss the complaint because, while it did state a claim under the Santa Fe County Code of Conduct, the conduct complained of is too trivial, insignificant or seemingly unintentional to proceed to a formal hearing.
- Conduct a formal hearing pursuant to the procedures set forth in Section 23 of the Code to commence on _____ in the second floor Legal Conference Room, Santa Fe County Offices, 102 Grant Avenue, Santa Fe, New Mexico. The subject of the complaint will be notified by separate communication.

Sincerely,

Adair Waldenberg, Chair