

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

**Santa Fe, New Mexico**

**January 10, 2014**

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. in 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

**Member(s) Excused:**

Leon Young

**Others Present:**

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

**III. Approval of Agenda**

The agenda was accepted by consensus.

**IV. Approval of Minutes: December 4, 2013**

The following corrections were noted:

Page 3, fifth paragraph: the "c" was missing from inclusion

Page 3, seventh paragraph: it should read reserved placeholder

Page 4, regarding the quarterly report, the Board agreed to postpone it and review it at the January 2014 meeting.

Mr. George moved to approve the minutes as amended. Mr. Baca seconded and the motion carried unanimously [4-0].

**V. Continuation of Review, Discussion, and Consideration of Additional Revisions, and Possible Vote on Recommending New Amendments to the Board of County Commissioners Regarding the Santa Fe County Code of Conduct Ordinance**

Chair Waldenberg preferred that the draft that is forwarded to the BCC have the most current ordinance with the recent changes. She asked that the Ethics Board have an opportunity to review the draft to go before the BCC to insure that it contains the Ordinance as it is today with the proposed changes.

Mr. Brown pointed out that the BCC will be asked to act on the amended and restated ordinance. He said he could highlight the current changes.

Staff discussed the deadline for submission for the BCC agenda items. The January 29<sup>th</sup> deadline for the February 11<sup>th</sup> BCC meeting appeared a doable date for staff to submit the highlighted ordinance.

Mr. Brown presented a series of amendments to the Code. The first group [*Exhibit 1*] refers to candidates and he proposed including candidates in Section 4 under definitions to read: ...the County Surveyor, including a Candidate for those positions.

The next change [*Exhibit 1*] was to **Section 23** changing the title to read **REPORTING AND RESOLVING ETHICS VIOLATIONS OF THIS ORDINANCE**  
Also recommended for change within that section was item

d) shall have the right to the issuance of ~~an administrative subpoena~~ a notice by the County Ethics Board compelling the attendance of county employees as witnesses at hearings and the production of documents.

Under **Section 26**, Non-retaliation, Mr. Brown said in his review of the language it read poorly and he recommended adding a claim filed in good faith. [*Also found on Exhibit 1*]

Mr. Mittle moved to approve the changes as recommended on Exhibit 1 and outlined above. His motion was seconded by Mr. George and passed by unanimous voice vote.

Referring to Exhibit 2, Mr. Brown said the change to **Section 23 J.** is to meet procedure rights and establishes that the witnesses are subject to cross-examination by the Respondent. K is an entirely new section and sets out that the Ethics Board shall not be required to consider dispositive motions filed by Respondent.

Mr. Baca moved to approve Exhibit 2 changes. His motion was seconded by Mr. Mittle and passed by unanimous voice vote.

**Section 23 H 1**, staff recommends clarifying language that a named person must pay his/her own legal expenses as written on Exhibit 3.

Mr. Mittle moved to approve H 1. His motion was seconded by Mr. George and passed by unanimous voice vote.

As noted on Exhibit 4, **Section 24 I.** was recommended for deletion because it conflicts with Section 23 A and to reserve the section as a placeholder.

Mr. Baca moved to accept staff recommendation and deletion of Section 24 I. Mr. George seconded and the motion passed by unanimous voice vote.

**VI. Review, Discussion and Approval of the Santa Fe County Ethics Complaint Form**

Mr. Brown noted that the violations were all pulled directly from the code.

Chair Waldenberg recommended organizing the form, perhaps by offense category, i.e., candidates, elections, etc. to make it less intimidating to the user. Mr. Baca favored organizing it by type of violation – disclosure issue, coercion, retaliation, etc.

“Candidate” was added to the second paragraph on page 1 and twice on page 4, and a phrase on page 1 was added advising that if the complaint has to do with an employee, contact HR and do not fill out the form.

Mr. Brown explained that County employees cannot be involved in aiding a complainant in filling out the form.

Page 2, boxes 1 and 5 were amended to: Improper receipt of a gift(s) total value greater than \$25.

Page 3, box 35 was amended to: “Using of ...”

A discussion ensued about the use of software and enhancing the software instructions.

Mr. Baca referred to page 9, **Section 17 B of the Code** which says, “...no candidate, elected official, appointed official ... shall not accept...” stating the candidate has to accept. There was agreement that was an error.

Mr. Baca moved to remove “not” and Mr. Mittle seconded. The motion passed by unanimous [4-0] voice vote.

Staff was directed to add “candidate” wherever there is a list of applicability of the Code.

Action on the ethics complaint form was postponed until it was reorganized.

**VII. Review, Discussion and Approval of Notice of Contemplated Action Form**

Mr. Brown indicated that this form comes into play after the CCEO presents the report. The Board reviewed the form without letterhead.

Once the new code is adopted, the web link will be included.

There was agreement to footnote the notice of contemplated action that, 1) retaliation is against the law and 2) advising the "subject of complaint" who they should contact.

**VIII. Review of Quarterly Report Presented by the Chair**

Chair Waldenberg proposed the quarterly report consist of reporting that there were no cases, the Board has spent its time strengthening the ordinance and attaching a copy of those revisions. Mr. Baca asked that the report recognize staff for their services to this Board.

Chair Waldenberg requested that staff forward the color-edited ordinance to the members before the BCC meeting.

The February 25<sup>th</sup> BCC meeting was selected to present the quarterly report. Staff will post notice that the Ethics Board may be meeting on the date of the BCC meeting in the event of a quorum.

**IX. Matters from the Board**

None were presented.

**X. Matters from the Public**

None were presented.

**XI. Matters from Staff**

Mr. Brown said he and Ms. Salazar have discussed the rule requiring rank and file employees to file an annual financial disclosure statement. He asked that this item be included on the next Ethics Board agenda.

**XII. Adjournment**

Upon motion by Mr. George and second, by Mr. Baca, Ms. Waldenberg declared this meeting adjourned at 4:45 p.m.

Approved by:



Adair Waldenberg, Chair  
Santa Fe County Board of Ethics

ESTEVAN BACA

ATTEST TO:

  
COUNTY CLERK

5-1-2014

Respectfully submitted by:

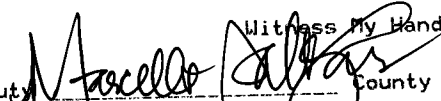
Karen Farrell, Wordswork



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

ETHICS BOARD MINUTES  
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I Hereby Certify That This Instrument Was Filed for  
Record On The 1ST Day Of May, 2014 at 03:02:13 PM  
And Was Duly Recorded as Instrument # 1735927  
Of The Records Of Santa Fe County

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

## PROPOSED ADDITIONAL REVISIONS TO COUNTY CODE OF CONDUCT

### SECTION 4. DEFINITIONS.

J. "Elected Official" means a member of the Board of County Commissioners, the County Clerk, the County Treasurer, the County Sheriff, the County Assessor, the County Surveyor, including a Candidate for those positions, but does not include the County Probate Judge.

New edits noted with **bolded** double strike-out and double underline

### **SECTION 23. REPORTING AND RESOLVING ETHICS VIOLATIONS OF THIS ORDINANCE.**

d) shall have a right to the issuance of ~~an administrative subpoena~~ **a notice** by the County Ethics Board compelling the attendance of county employees as witnesses at hearings ~~and the production of documents~~.

### SECTION 24. COUNTY ETHICS BOARD.

F. The County Ethics Board shall have the power to ~~issue administrative subpoenas compelling compel~~ the attendance of county employees as witnesses at hearings ~~and the production of documents, and the authority to seek enforcement of those subpoenas by the First Judicial District Court.~~ **A notice to attend will be delivered through the employee's chain of command.**

New edits noted with **bolded** double strike-out and double underline

### **SECTION 26. NON-RETALIATION.**

A. The Board of Commissioners does not tolerate retaliation, workforce discrimination, intimidation or harassment of any kind against any person who has reported a violation of this Ordinance in good faith. This non-retaliation provision applies whether the complaint is ultimately determined to be well-founded or unfounded. All Elected Officials, Appointed Officials, Employees and Volunteers are specifically prohibited from taking any adverse employment action, engaging in workplace discrimination or harassment of any kind, or other retaliatory action against anyone for reporting a ~~good faith~~ claim **in good faith** of a violation. Anyone who believes that they have been subject to workplace discrimination, intimidation or harassment of any kind or who has been retaliated against in violation of this Ordinance should submit a sworn complaint to the Ethics Board or the Human Resources Department setting forth the claim. Any employee who engages in workplace discrimination, harassment or intimidation against anyone in retaliation for filing an ethics complaint, for testifying at a hearing or for cooperating in an investigation of an ethics violation, may be disciplined up to and including termination.

**PROPOSED ADDITIONAL REVISIONS TO COUNTY CODE OF CONDUCT**

This provision needs to be edited to make it clear that a named person has a procedural right to cross-examine any witnesses called by the County Contract Ethics Official.

**SECTION 23. REPORTING AND RESOLVING ETHICS VIOLATIONS.**

J.

2. the CCEO shall proceed first by calling witnesses and submitting documents into evidence, all witnesses who shall be subject to cross-examination by the Respondent;

This provision does not currently exist but is recommended since attorneys for named persons will try to employ procedural methods to have cases thrown out. These are time-consuming collateral proceedings and not generally required in administrative cases because the court rules of civil procedure do not apply.

K. Prior to the hearing, either the Respondent or the CCEO may file motions related to continuance of the date set for hearing or for issues related to discovery. The Ethics Board may consider any such motions at a special meeting. The Ethics Board shall not be required to consider dispositive motions filed by Respondent such as motions to dismiss or for summary judgment.

**PROPOSED ADDITIONAL REVISIONS TO COUNTY CODE OF CONDUCT**

This provision needs to be edited to make it clear that a named person must pay his/her own legal expenses.

**SECTION 23. REPORTING AND RESOLVING ETHICS VIOLATIONS.**

H.

1.

a) may be represented by counsel at their own expense, who is licensed to practice law in this state;



## PROPOSED ADDITIONAL REVISIONS TO COUNTY CODE OF CONDUCT

This provision needs to be deleted as it conflicts with Section 23A which is a better limitations provision than this one which is ambiguous.

### **SECTION 24. COUNTY ETHICS BOARD.**

I. ~~No action may be taken by the County Ethics Board on any complaint that is filed later than one year after a violation of this Ordinance is alleged to have occurred or that is filed more than six months from the date of the discovery of the alleged violation, upon due diligence by the complaining party, of the facts constituting a violation, whichever event occurs later.~~[Reserved]

