

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

**Santa Fe, New Mexico**

**May 23, 2013**

This meeting of the Santa Fe County Ethics Board was convened by Chair Adair Waldenberg, on the above-cited date at approximately 3:00 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  
David Mittle  
Leon Young

**Member(s) Excused:**

William Peyton George

**Others Present:**

Diane Garrity, County Ethics Contract Official  
Steve Ross, County Attorney  
Willie Brown, Assistant County Attorney  
Lisa Roybal, County Manager staff  
Bernadette Salazar, County HR Director

**III. Approval of Agenda**

Mr. Baca moved to approve the agenda and Mr. Mittle seconded. The motion to approve the agenda carried by unanimous [4-0] voice vote.

**IV. Approval of April 2, 2013 minutes**

Two corrections were noted and Mr. Mittle moved to approve the minutes as amended. Mr. Baca seconded and the motion carried by unanimous [4-0] voice vote.

## **V. Review, Discussion and Possible Direction of Possible Amendments to the Code of Conduct Ordinance**

Mr. Mittle said that according to the current draft the Ethics Board has no jurisdiction over employees. As the draft reads if an employee brings in a complaint that is subject to an ethics violation it is forwarded to HR. He understood that according to the ordinance an employee complaint would come to this Board. He referred the Board to Sections 23C, 24E, 24G, 24H and 25.

Mr. Brown said the intent has always been that any complaint involving a Santa Fe County employee would be handled by HR. Employees have an expectation of confidentiality. In fact, union contracts require confidentiality of employee infractions that may overlap ethical misconduct and those are all investigated by the HR. The HR handbook talks about confidentiality, investigation and hearings having to do with employee infractions. Under the Inspection of Public Records Act, employee matters are confidential insofar as they involve matters of opinion.

Mr. Brown said employees are bound by the Code of Conduct and he referred to the first line in Section 3. Mr. Mittle suggested that that then changes the union contract. He said employees are either part of the Code which includes Ethics Board oversight, or they're part of HR and they should not be included in Ordinance 2010-12.

Disagreeing with Mr. Mittle's interpretation of the scope of the Code and how it affects employees, Mr. Brown said the starting point is that employees have to be ethical. All employee alleged infractions – HR handbook or a union agreement – are investigated by HR.

Mr. Mittle said there is something inherently wrong if the union contract prohibits the Board's review. If that is the case why mention employees in the code? He gave voice to his concern that employees may not understand that it will be HR rather than this board that becomes involved. He understood that an employee's sworn statement would be forwarded to this board.

Mr. Young mentioned that the 57-page federal code of ethics does not mention unions. An ethical violation is independent of employment classification.

Ms. Garrity said she didn't see how collective bargaining came into play. An ordinance creates a regulation and a law that all employees are directed to follow. She advocated empowering this board to further an ethical culture so employees will feel comfortable putting their name on something.

Since his employment at the County, Mr. Brown said it has been his understanding that employees would be investigated – whether through the bargaining agreement or procedures in the HR Handbook – by HR.

Ms. Salazar said the intention of the ordinance was to make sure that investigations regarding employees would remain in the hands of HR. In the HR Handbook as well as the ordinance it is clearly stated that an investigation regarding employees will be conducted by HR. Any employee investigation whether union or non-union will be conducted by HR.

Mr. Mittle pointed out that the Commission as well as the City Council created the ethic boards to address issues that come up and to create a forum where employees know they will be treated fairly in a neutral environment.

Ms. Garrity said HR is not prevented from investigating an ethics complaint and what this Board does could be completely different. She acknowledged a hypothetical problem if this board determined no ethics violation and HR determined here was a violation of the Code of Conduct. She suggested there could be two parallel tracks and could not see how including employees within the Ethics Board's analysis could impede the County's authority to discipline or influence the requirements of collective bargaining agreements.

Given these meetings are public proceedings employees privacy concerns arise, stated Mr. Ross. Mr. Mittle argued that complaints have to be sworn to address that issue, that the complainants know that their names will be made public. Mr. Ross pointed out that the employee under consideration didn't sign on to the affidavit. Mr. Ross said he understood the Ethics Board would do a thorough job, the point is the process would occur in public. Ms. Garrity countered that was not an issue, citing State Personnel hearings and arbitration as public hearings.

The original language in the Code in Section 23 E. states that, The County's contract ethics official shall refer all employment matters to the County's Human Resources Department. Ms. Garrity said that does not mean that the Ethics Board cannot investigate the issue. Public employees are under the microscope and that's part of doing business in government, especially if the County wants to promote the standard of transparency.

Ms. Salazar recalled that the BCC discussed the issue of a potential Code of Conduct violation by an employee and it was clear to her from that discussion that the all employee related matters would come to HR.

A discussion ensued as to whether appointed officials (deputies, Assessor, Clerk, Treasurer) were employees. This was to be clarified by staff in written format at the next meeting

Mr. Mittle pointed out that neither the City of Albuquerque nor the County of Bernalillo boards of ethics have exceptions for employees. Further, it appeared from County HR's power point for employee training that following ethics official investigation it will be presented to this Board. The presentation clearly communicates that complaints will come to the Ethics Board.

The training clearly states, said Ms. Salazar, that if it is an employee issue it will be handled through HR and other than that it is handled through the Ethics Board. Mr. Mittle said that was not clear in the material he reviewed.

Speaking as the ordinance drafter, Mr. Ross said it was never intended for employees to be subject to Board of Ethic's jurisdiction for any purpose at any time anywhere. This Board was intended to address other officials that were not already covered by the HR Handbook. The County has a very good process for dealing with employees. He said Ms. Salazar's staff was dedicated and skilled in handling employee complaints. "Employees are not the issue...the issue is others."

Mr. Ross emphasized that employees did not sign up to tried in public by a fellow employee's ethics complaint that might be bogus. He opined that it was not fair to ask them to do so.

Ms. Garrity reviewed her understanding of the process: an employee submits a sworn complaint to the Legal Department, the Legal Department takes the complaint and sends it to the CCEO, the CCEO does a preliminary review and makes a determination; that determination is explained to the Ethics Board – she said there would not be a hearing if it is determined the complaint is bogus. Mr. Ross repeated his concern that it would come in front of a public process and that is inappropriate and unfair to the employee.

Ms. Garrity said the Ethic Board's comments are in no way a criticism of HR which does an excellent job. Rather the question is whether there is a parallel process occurring.

As a point of information, Ms. Roybal said the language of the ordinance was amended following a sheriff's abuse of power.

Chair Waldenberg requested the following be furnished one week prior to the next meeting.

- The BCC minutes requesting the creation of the ordinance.
- The BCC minutes adopting the ordinance
- A history of the ordinance in the County
- An outline of a process of what would occur in open and closed sessions
- An outline of how Albuquerque and Bernalillo handle employee ethic issues while staying within union agreements
- A distinction regarding at-will/appointed officials and other employees; which are subject to an HR review and fall under the HR Handbook; how an at-will employee is hired, fired, and how complaints about that individual are handled
- Determination of why "immediate" family was used within the ordinance

Chair Waldenberg said it was appropriate for this Board to recommend to the BCC that employees be covered under the ordinance, and obviously it may not be accepted.

Mr. Brown pointed out that a complaint in a personnel file is confidential.

On a related topic, Chair Waldenberg said it was determined that complaints in other government entities are forwarded to the Clerk's office. She asked how it is that complaints are forwarded to the County attorney's office. Mr. Ross said the County Attorney has the role of discriminating against sworn or unsworn complaints and the Commission has a great deal of trust in the Legal Department.

Mr. Mittle offered an amendment that in the event the County Attorney's office has a real or perceived conflict of interest the complaint shall be forwarded to the CCEO and if the CCEO had a conflict the Commission would appoint a new CCEO.

The legal office serves as a conduit and beyond ascertaining whether the complaint is sworn there is no other role, stated Mr. Brown. Mr. Mittle said if the complaint is about someone in the legal office it puts the office in an awkward position.

Ms. Garrity clarified that someone not covered by the Code of Conduct is not subject to investigation by this Board. Ms. Salazar said the individual must follow the Code regardless of who investigates their conduct. Employees are covered under the Code as are elected officials, appointed officials and volunteers.

Mr. Mittle proffered the question of what is the role of the Ethics Board?

Chair Waldenberg said their role could be oversight of the Ethics Ordinance and the training materials. Mr. Mittle pointed out that the training material is outside of their purview because it's within HR.

Ms. Garrity mentioned *Cox v. NM Department of Public Safety*, the New Mexico Supreme Court decision regarding an IPRA request of all complaints filed against a law enforcement officer.

In regards to the Administrative Procedures Act, Mr. Brown said he had strong feelings against adopting it because in New Mexico, it is a law without substance and can only apply to state agencies by statute. New Mexico agencies have rulemaking authority and due process within those rules. In fact, licensing agencies use the Uniform Licensing Act. The Administrative Procedures Act cannot be applicable unless a law makes it apply and this Board cannot make it applicable by ordinance.

Chair Waldenberg mentioned that the definition of family was preferred over immediate family which is more narrow and was used in the Ordinance. Mr. Brown reviewed the Governmental Conduct Act definition of family, meaning an individual's spouse, parents, children or siblings, by consanguinity or affinity. Ms. Roybal was tasked to determine why "immediate" family was used.

Mr. Brown distributed three pages (2, 4, 19) with changes [*Exhibit 1*]. Under Section 4, Definitions, redundant language was removed. Page 4, Section 4, T, the definition of "Volunteer" was underlined as new language is within the Code. Page 19, regarding

recusal, language of “or anyone in the official’s household” was added. There were no questions or concerns raised regarding the proposed changes.

Referring to recusal, Mr. Mittle suggested that if an elected official made a disclosure regarding an issue it could prejudice the entire board/jury. Mr. Young said one is not required to provide a reason for recusal.

Under Section 29, Penalties, Mr. Brown said Mr. Ross suggested renumbering that section with County penalties A; the items under that numbered with Other Penalties, B; and those items numbered.

The three changes proposed by Mr. Brown were accepted.

Under Section 29, and in light of the union agreements, Ms. Garrity suggested removing D, “proceedings and penalties pursuant to the Santa Fe County Personnel Handbook where appropriate.” There was consensus to eliminate this clause.

Regarding Section 23, Reporting Ethics Violations, Clause C, Chair Waldenberg said she wanted it to be explicit that all complaints whether anonymous or not or sworn or not be addressed to the Ethics Board... (adding “anonymous or not” to the clause). The form of the complaint should also be listed, i.e., email, letter, phone message, etc. If the complaint is addressed to the Ethics Board or one of its members it needs to be forwarded to the CCEO. Mr. Brown said the issue or whether a standard form would be used was not resolved.

Chair Waldenberg requested that materials for the next meeting be available one week before the meeting.

## **VI. Matters from the Board**

Ms. Salazar reported complaint statistics noting they were not categorized. She offered to categorize the complaints for the next meeting. The number of complaints fluctuates monthly from three to 13. She attributed the increase to employee comfort in coming forward.

Mr. Mittle encouraged staff to keep up the good work and said his question regards the role of the Ethics Board.

The next meeting was tentatively scheduled for June 27 at 3 p.m. pending Mr. George’s availability.

Chair Waldenberg said she reported the Board’s activities to the BCC and informed them that she remains to be concerned that the reporting barrier may be too high. She said they were very supportive of the Board’s work.


**VII Matters from the Public**

None were presented.

**VIII. Adjournment**

Having completed the agenda and with no further business to come before this Board, Ms. Waldenberg declared adjourned at 4:40 p.m.

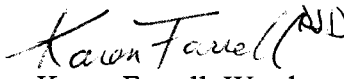
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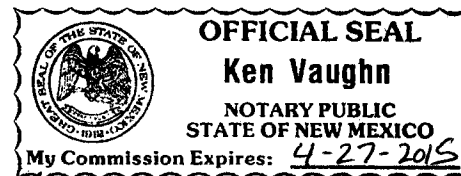
  
Adair Waldenberg, Chair  
Santa Fe County Board of Ethics

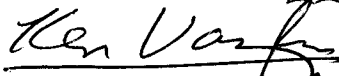
ATTEST TO:

COUNTY CLERK

Submitted by:

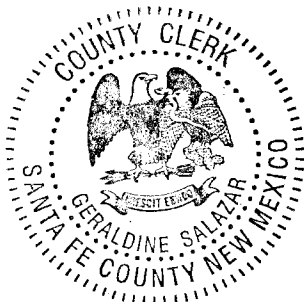
  
Karen Farrell, Wordswork



  
Notary Public

Before me, this 26 day of September, 2013

my Commission Expires: 4-27-2015



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

ETHICS BOARD MINUTES  
PAGES: 7

I Hereby Certify That This Instrument Was Filed for  
Record On The 3RD Day Of October, 2013 at 11:19:51 AM  
And Was Duly Recorded as Instrument # 1719775  
Of The Records Of Santa Fe County

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