

I Hereby Certify That This Instrument Was Filed for
Record On The 11TH Day Of August, 2011 at 04:25:26 PM
And Was Duly Recorded as Instrument # **1642432**
Of The Records Of Santa Fe County



Deputy Marcella [Signature] Valerie Espinoza
County Clerk, Santa Fe, NM

Witness My Hand And Seal Of Office

MINUTES OF THE

SANTA FE COUNTY

ETHICS BOARD MEETING

Santa Fe, New Mexico

June 9, 2011

This meeting of the Santa Fe County Ethics Board was convened by County Attorney Steve Ross, on the above-cited date at approximately 3:00 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:

Estevan Baca
Randy Forrester
Adair Waldenberg

Member(s) Excused:

David Mittle, Alternate

Others Present:

Diane Garrity, Contract Ethics Official
Steve Ross, County Attorney
Penny Ellis-Green, Deputy County Manager
Bernadette Salazar, County HR Director
Lisa Roybal, Constituent Liaison
Phaedra Haywood, *New Mexican*

III. APPROVAL OF AGENDA

Ms. Waldenberg moved to approve the agenda as published. Mr. Baca seconded and the motion carried unanimously.

IV. APPROVAL OF MINUTES: May 12, 2011

Ms. Waldenberg moved approval. Mr. Baca seconded.

The following corrections were noted:

Page 3: "The parameters for penalties for violations of County laws were addressed and Mr. Ross said fines cannot exceed \$300 for each violation."

Page 5: "Commissioner Mayfield requested the Board allow for "Public Comments" within their agenda with which Chair Forrester concurred."

The corrections were accepted and the minutes as amended were approved by unanimous voice vote.

V. REVIEW, DISCUSSION AND POSSIBLE ACTION on Changes to Ordinance 2010-12

[Ordinance 2010-12: Available santafecounty.org/ordinances_and_resolutions]

Ms. Ellis-Green noted that Ordinance 2010-12 and Senate Bill 432 were provided for review and any proposed ordinance changes will be forwarded to the Board of County Commissioners.

Mr. Ross said the ordinance was drafted with the Governmental Conduct Act as its guide and incorporates state statutes. Aside from definitions, he said everything was in the ordinance. Violation of the Governmental Conduct Act is a felony and violation of the County ordinance is a petty misdemeanor. The Board may want to consider adding definitions, i.e., "substantial" and "contract."

Ms. Garrity said the Government Conduct Act allows a local government's ethics ordinance to be stricter but not looser. She cautioned against being too stringent.

Ms. Waldenberg suggested applying the state's definition of "family" to the financial and non-financial sections of the ordinance.

Chair Forrester recited the state's definition of "family" – "which means an individual's spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partners' children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild and great-grandparent."

Ms. Waldenberg appreciated the state's use of "consanguinity or affinity" within its family definition.

There was agreement to include household members to the definition of family.

Ms. Waldenberg referred to recusal and that the ordinance includes an official having a financial interest but fails to include the official's family. She offered two recent examples of officials voting on issues, both involving bonds, where it could be perceived their partner or client would glean a benefit. In both cases the recusal of the elected

official would not have affected the outcome but they ought not to have been voting on the issue.

Ms. Garrity noted that the Government Conduct Act expands the burden of disclosure onto everyone within the process, e.g., the person negotiating the contract, person approaching the government official. These are usually procurement-type issues. She said highlighting conflict issues for officials may be helpful because many times the issues appear innocuous until further defined.

Ms. Garrity defined disclosure as an “active” process not passive, Expanding the definition to include “active” could help encourage people to disclose more information, e.g., “I am related to...I have done business with...” etc. The idea is to alert the official to avoid the appearance of an impropriety and provide the information to the public to clear the air.

As an advisory body, the Board recognized their suggestions may not be accepted by the Commission.

Clarifying a “sworn complaint” Ms. Garrity said the individual would swear under penalty of perjury that the information is true and correct. There is also a verification process which produces the same results verifying that all the information contained in the complaint is true.

Ms. Ellis-Green clarified that municipalities and counties have different penalty thresholds and \$300 is the maximum fine a county can imposed by state law.

Mr. Baca remarked that the City of Santa Fe and Bernalillo County’s ethics boards have more than three members. He observed that having three members may limit the board’s effectiveness and he suggested expanding the membership to five.

Ms. Waldenberg pointed out that the City’s ethics board has been unable to take action on an item because the number of conflicts of interest has prevented them from obtaining a quorum. She too supported a five-member board.

There was Board consensus to recommend expanding the board to five members, to name alternate David Mittle as an active member and review the applications for an additional member. With five members, there was consensus an alternate was unnecessary.

The following changes were recommended:

- Increase the Board to five members
- Expand the definition of family within the financial and non-financial sections
- Highlight recusal as an active information process
- Include removal of official from office [discussed later in the meeting]
- Add the City of Santa Fe’s Ethic Board procedures items E, F and G regarding removal for just cause, vacancies, and compensation – three unexcused absences within a 12-month period constitutes just cause

At this point, no compelling reason to change the definitions regarding “substantial” and “contract” were registered.

Chair Forrester directed staff to draft the proposed ordinance changes.

VI. REVIEW AND DISCUSSION of Procedural Policies of Bernalillo County and the City of Santa Fe

Ms. Ellis-Green said the abovementioned procedures were provided as guidelines.

Ms. Garrity cautioned that whatever is adopted will have to be adhered to.

Ms. Waldenberg remarked that Bernalillo’s board uses subcommittees which she said further substantiated the need to expand this Board.

If somebody under oath lies to the Ethics Board that incident would be referred for a determination and if verified the incident would be referred to the District Attorney’s Office.

Ms. Waldenberg recommended including language to that effect thus alerting people that lying to the Ethics Board is a crime. Ms. Garrity said the board administers an oath and that should serve appropriate notice that they are under oath.

Mr. Baca suggested adding the perjury alert to the complaint form.

Although the Board can recommend suspension or removal from office of a public official, Mr. Ross said there is a statutory procedure for the removal of county officials which he stated was a very difficult procedure. If removal from office was a recommendation the Board wanted within their purview, he cited the appropriate location within the ordinance for such a recommendation to be made.

The board reviewed the deadline outlined within Bernalillo rules and regulations and offered the following amendments:

Section 3.

B. Summary Dismissals:

“Any Board member who requests that the Complaint be considered at a preliminary hearing shall so notify the County Attorney within ~~ten (10)~~ fifteen (15) days ...”

“The Complainant shall be entitled to appeal the decision by filing a notice of appeal with the County Attorney within ~~ten (10)~~ fifteen (15) calendar days after Complainant’s receipt...”

C. Response for Preliminary Hearing:

“Respondents shall be given ~~twenty (20)~~ twenty-five (25) calendar days notice...”

“The Respondent’s statement shall be filed with the Internal Audit Contractor ~~ten (10)~~ fifteen (15) calendar days ...”

“The Internal Audit Contract shall provide the Complainants and Board members with the Respondent’s statement ~~three (3)~~ five (5) County working days ...”

G. Hearings:

- 2.c. Notice: “The Board shall require that the parties provide in advance a written statement of all issues to be addressed, a list or proposed witnesses...at least ~~ten (10)~~ fifteen (15) day prior to the scheduled hearing.
“Parties objecting to authenticity of proposed exhibits must make an objection in writing to the County attorney at least ~~three (3)~~ five (5) days prior to the scheduled hearing...”

By mutual agreement of the parties deadlines can be extended. All other deadlines noted in the Bernalillo document were unchanged.

The term “Internal Audit Contractor” shall be replaced with “County’s Contract Ethics Official.”

Referring to evidence (4), Ms. Garrity noted that usually the technical rules of evidence do not apply and instead the Legal Residuum Rule does. Legal Residuum establishes that there has to be some direct evidence. Section 4. b. was rewritten as follows:

4. b. The Technical Rules of Evidence do not apply and hearsay is permitted so long as it is deemed to be reliable. The Legal Residuum Rule applies.

Mr. Baca remarked that Bernalillo’s rules fail to address confidentiality regarding the hearings. Mr. Ross said the Open Records Act and Open Meetings Act make confidentiality a difficult situation. Hearings and meetings are open to the public.

Mr. Ross stated that at the end of reviewing evidence, etc. the board can go into executive session to deliberate which may be the only time the board can discuss the issue in closed session.

Ms. Garrity expressed concern that a frivolous complaint may injure an individual. She reviewed the Inspection of Public Information Act Compliance Guide regarding exemptions and found none applied.

Section 2. Advisory Opinions amended as follows:

- A. The Board shall issue advisory opinions pursuant to the following procedures:
1. The ~~Subcommittee Board~~: A ~~subcommittee of~~ **The** Board shall review advisory opinion requests from individuals who are subject to the Ordinance.
 2. remains as written
 3. [deleted]
 4. remains as written and renumbered as 3]
 5. [deleted]
- B. ~~Confidentiality~~, Public Hearings and Public Record

1. The Ethics Board complies with the New Mexico Open Meetings Act and the New Mexico Inspection of Public Records Act.
2. [deleted]
3. [remains as written and renumbered as 2]

Ms. Ellis-Green said alternate Mr. Mittle did phone earlier that he would be unable to attend.

VII. DISCUSSION on Santa Fe County Code of Ethics Policy Acknowledgement Statement

Ms. Ellis-Green reviewed the personnel policy and highlighted necessary changes for elected officials, volunteers, and appointees. "Supervisor" and "disciplinary action" were removed. The last bullet point was revised to include "violations of this policy may result in fine, censure and/or referral to the District Attorney."

Chair Forrester said once the changes are made the acknowledgement statement should be forwarded to all elected and appointed officials and volunteer employees.

VIII. MATTERS FROM THE BOARD

Ms. Waldenberg announced she would be absent from the next meeting.

The next meeting was scheduled for July 14th at 3 p.m.

IX. MATTERS FROM THE PUBLIC

None were presented.

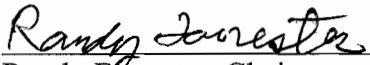
X. EXECUTIVE SESSION

None was deemed necessary.

XI. ADJOURNMENT

Having completed the agenda and with no further business to come before this board, Ms. Waldenberg moved to adjourn. Mr. Baca seconded and by unanimous voice vote this meeting was declared adjourned at 4:30 p.m.

Approved by:



Randy Forrester, Chair
Santa Fe County Board of Ethics

ATTEST TO:

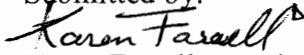
COUNTY CLERK

Before me, this ____ day of _____, 2011.

My Commission Expires:

Notary Public

Submitted by:



Karen Farrell, Wordswork