

MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD MEETING

October 13, 2021

I. Call to Order

This meeting of the Santa Fe County Ethics Board was convened by Chair Carol Thompson, on the above-cited date at approximately 1:30 via Webex.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, and pursuant to the New Mexico Attorney General's Open Government Division Advisory during COVID-19, this meeting was conducted on a video/audio platform.

II. Roll Call

Roll call indicated the presence of a quorum as follows:

Member Present:

Carol Thompson, Chair
Michael "Rosey" Rosanbalm, Vice Chair
Greg Coplans
Judith Kaye
Jonelle Maison

Members Absent:

None

Others Present:

Greg Shaffer, County Attorney
Lisa Katonak, Community Development Department
Olivia Romo, Manager's Office

III. Approval of Agenda

Upon motion by Mr. Rosanbalm and second by Mr. Coplans, the agenda was unanimously approved as published.

IV. Request Approval of August 19, 2021 Meeting Minutes

The following corrections were noted:

Page 7, Section 20 F: Spell out – General Obligation Bond

SFC CLERK RECORDED 12/02/2022

Page 8, Section 24: Last paragraph, second sentence, "his" should be "this"
 Page 8, Section 24: Last paragraph, should be "analogous"

In response to concern regarding what appears to be a disconnect under the Non-Retaliation section language and the minutes, County Attorney Greg Shaffer said what is reflected in the draft ordinance contains recommendations that he and former counsel Lockhart propose. Santa Fe County Human Resources Handbook, Section 6.25, contains a mandatory duty to report violations of laws or other improper governmental activity.

Page 10, Section 27, second to last line, should read, "complainant"

Page 5, Section 14, last Action item should read "who receives"

Page 8, Section 24, first sentence, CCDO should read "CCEO"

There was a discussion regarding the accuracy of citations provided in the minutes on page 9, for standard of proof. [The citation was removed from the minutes.] Mr. Shaffer commented that it appears Mr. Lockhart was referencing the New Mexico Administrative Code.

With those corrections, Mr. Coplans moved to approve as corrected. Mr. Rosanbalm seconded. The motion passed by unanimous voice vote. [Corrections were incorporated in the August 19, 2021 minutes]

V. Review and Possible Approval of Amendments to the Santa Fe County Code of Conduct Ordinance, including Public Trust; Conduct Avoiding Impropriety; Campaign Financing; Political Activity; Proper Uses of Campaign Funds; Prohibited Uses of Campaign Funds and Disbursement of Surplus Campaign Funds

A discussion occurred as to whether reconsideration of a previously decided section required a motion to rescind. Mr. Shaffer said the caption as noted above on the published agenda provides adequate public notice that there may be amendments to the draft. If there is amendment to a provision that the Board has previously made at its last meeting then someone who voted with the prevailing side can make a motion to reconsider.

[For clarity purposes motions are prefaced as **Action.**]

Non-substantive word changes and typos were accepted without motion.

Chair Thompson requested that Mr. Rosanbalm lead the discussion on each section.

Ms. Katonak informed the board she has transferred to a different department within the County and Ms. Olivia Romo will be the committee's liaison. She thanked Mr. Shaffer for attending and the committee for their hard work. Ms. Katonak was thanked for her assistance.

SECTION 1. SHORT TITLE. – No changes

SECTION 2. DECLARATION OF POLICY. – No changes

Ms. Maison said “candidates” should be eliminated. Referring to the August 19th minutes, Mr. Coplans said “candidates” was eliminated and referred to the Campaign Reporting Act.

Mr. Shaffer said while it doesn’t technically apply to candidates, candidates are subject to other sections of the ordinance and it is not necessarily in conflict. The County has the authority to impose restrictions as long as they don’t conflict with state law.

Mr. Coplans emphasized the importance that everyone understand the Code of Conduct and the affirmation of agreeing to abide by it improves the ethical environment. Mr. Rosanbalm agreed.

SECTION 3. RESPONSIBILITY OF PUBLIC OFFICE AND EMPLOYMENT. – No Changes

SECTION 4. DEFINITIONS.

B. Administrative Adjudicatory Matter

- A typo on line two, Planning Commission~~ener~~ was noted
- An unspecified “Board” will not be referred to within the ordinance; therefore: Board of County Commissioners

Action: Ms. Maison moved to accept the language of B and correct the typo. Mr. Coplans seconded and the motion pass by unanimous [5-0] voice vote.

F. Board of County Commissioners or Board

- Use “Board of County Commissioners” rather than “Board” to avoid confusion

[Although there was no formal action, it appeared there was agreement.]

K. County’s Contract Ethics Official or CCEO...

- Section 20 rather than Section 24

Mr. Shaffer confirmed that cross references will be verified.

M. & N. A line spacing issue was noted.

Q. Good Faith

Mr. Shaffer said this definition was added because it was used in the retaliatory section and as a critical term, "good faith" was added. This definition is the standard from the Whistleblower Protection Act and it provides consistency in subject matters between state law and local ordinance.

Action: Mr. Rosanbalm moved to approve and Ms. Maison seconded. The motion passed by unanimous [5-0] voice vote.

R. Non-public Information

Action: Ms. Maison moved to eliminate the last clause "~~and if used or disclosed, a Personal Benefit of advantage is likely to result.~~" Ms. Kaye seconded and the motion passed by unanimous [5-0] voice vote.

RS. Party

The following grammatical corrections were accepted following the last semicolon; "and a members of the general public who participates in a Pending Adjudication."

WX. Volunteer

A question of whether volunteers sign an acknowledgment to abide by this Ordinance as stated in this definition was indeed fact. Mr. Shaffer distinguished volunteers appointed officials, such as members of this board. He offered to review whether volunteers do sign an acknowledgement relative to this ordinance. The language is good practice, although one does not need to sign an acknowledgment to be bound by the ordinance. If applied literally it could have unintended consequences. As a separate policy discussion, ensuring that ethical behavior is spread to raise the standard of conduct is desired.

The acknowledgment of the ordinance should be the same for all. Ms. Romo said staff will review the process for clarification.

Action: Ms. Kaye moved to eliminate the last clause, "~~and who has signed an acknowledgment that they agree to abide by this Ordinance.~~" Ms. Maison seconded and the motion passed by majority [4-1] voice vote with Mr. Rosanbalm voting against.

SECTION 5. NON-PARTISANSHIP. No changes

SECTION 6. PUBLIC TRUST. No changes

SECTION 7. RECUSAL.

Mr. Rosanbalm questioned the use of "personal" bias and supported dropping "personal." Mr. Kaye said a bias does not need to be based on a previous or ongoing relationship and agreed that A.1 required amendment.

- A.1. "...when the official has a ~~personal~~ bias or prejudice concerning a Party or its representative or has prejudged a disputed evidentiary fact." [The remainder was deleted.]

Action: Upon motion by Mr. Rosanbalm and second by Ms. Kaye, the above bulleted language was approved unanimously.

Ms. Maison said the language in Section 7 was badly written. She recommended flipping B and C to place recusing and refusing to recuse closer. Also in D, it reads, "when it appears" and she asked to whom?

Speaking from his experience as a lawyer, Mr. Coplans said sometimes people do not recognize what appears to be an obvious conflict of interest.

Mr. Shaffer said when a County Commissioner recuses him or herself from an issue, it has to be done on the record at the beginning of the related hearing. In regards to D, a party to a case has a duty to declare that the Commissioner recuse because of whatever that reason is. If the party does not make such a declaration then in practice they waive any objection. Ms. Maison said, "If, prior to the hearing" suggests that an *ex parte* communication has taken place. She recommended stating, "At the beginning of a hearing"

- 7.D. ~~If, prior to the hearing~~ at the start of the hearing, ...

Action: 7.D. Ms. Kaye moved the above language and Mr. Rosanbalm seconded. The motion passed by unanimous [5-0] voice vote.

Referring to E, Ms. Maison said the "shall" should be "may." It can't be mandatory; it needs to be discretionary. Mr. Shaffer said the point is, if one does not act they can't complain. By making it mandatory the objection has to be that the party shall promptly notify otherwise any objection is waived.

Ms. Maison said the sentence is badly written and the actor is too far from the action. The subsection is about the Party and should be, "If, during a hearing a Party believes an elected official or appointed official should recuse himself or herself when it appears that grounds exist for recusal, the party shall promptly notify the chair of what those grounds are..." The actor of the sentence is the party not the elected or appointed official. Mr. Shaffer stated he appreciated her comment.

SECTION 8. CONDUCT AVOIDING IMPROPRIETY.

Under 8.B, in the last clause the word should be "written" not "writing." This in fact is too narrow because it could be photos/pornography, drawings etc.

Action: Ms. Maison moved to remove "writing" from the last clause. Ms. Kaye

seconded and the motion passed by unanimous [5-0] voice vote.

The question of whether the inclusion of "political affiliation" could be considered a free speech issue.

Ms. Kaye moved to reconsider the language in Section 8.E and Mr. Rosanbalm seconded. The motion carried by majority [4-1] voice vote with the Chair voting against.

Action: Ms. Maison moved to remove "or political affiliation" from the last clause and add an "or" before sexual orientation. Ms. Kaye seconded and the motion carried by majority [3-2] voice vote with Chair Thompson and Mr. Coplans voting against.

8.D. Mr. Coplans suggested including alcoholic beverages rather than limiting the section to non-alcoholic. Ms. Maison recalled that "refreshments" was used throughout the document, "meals and refreshments" and suggested it was merely an editing error.

Action: Ms. Maison moved to strike ~~non-alcoholic~~ and insert "refreshments." Mr. Coplans seconded and the motion passed by unanimous [5-0] voice vote.

SECTION 9. LIMITATIONS ON EMPLOYMENT No changes.

SECTION 10. PROHIBITED FINANCIAL INTEREST IN COUNTY BUSINESS.
- No changes

SECTION 11. *EX PARTE* COMMUNICATIONS.

There was consensus to italicize *ex parte*.

C. A grammatical change was accepted as follows: "...during emergencies or that ..., shall not be prohibited if the official reasonably believes that ..."

SECTION 12. CONFLICTS OF INTEREST, DISCLOSURE.

C. "assure" should be "ensure"

F. The question of whether "volunteers" should be included came up.

Mr. Shaffer said eliminating volunteer was likely by design and he provided an example of a volunteer having a relationship with a County contractor. The code is not intended to deter volunteerism. Ms. Maison referred to 12.E which states volunteers shall not solicit or receive Anything of Value. Mr. Shaffer noted that E and F are different standards. In E, using firefighters as an example, it would be improper for a volunteer firefighter to solicit funds to provide special protection. However, F goes beyond that, and prohibits the acceptance of Anything of Value from a person, business or other entity that contracts or does any business with the County. It is the Board's prerogative to include volunteers.

F. Grammatical changes were accepted: "...should know that the person, business or other entity that contracts or does any business with the County; desires to contract or do business with the County; is regulated by the County; has an application pending before the County; or whose interests may be affected by the County.

G. The citation of Section 25(H) may be wrong and staff will check all cross references.

SECTION 13. CONFIDENTIAL INFORMATION AND MISUSE OF NON-PUBLIC INFORMATION.

There was concurrence to rename the section: Misuse of Confidential Information.

SECTION 14. DUTY TO REPORT IMPROPER OFFERS. No changes

SECTION 15. MISUSE OF COUNTY PROPERTY AND RESOURCES FOR PRIVATE GAIN OR PERSONAL ADVANTAGE. No changes

Under 15, Ms. Maison did note that in New Mexico "law" is considered state law and she suggested changing law to ordinance. Reminding the Board, that it is their document, Mr. Shaffer said he considered it applicable law and was okay with it.

SECTION 16. MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRIVATE GAIN OR PERSONAL ADVANTAGE BENEFIT.

Noting that Personal Benefit is a defined term, Ms. Maison introduced the following motion:

Action: Replace "advantage" with "benefit" in the title and the last word of 16.A. Mr. Coplans seconded and the motion passed by unanimous [5-0] voice vote.

Ms. Maison reminded the Board that all defined terms will be in bold throughout the document and only proper nouns capitalized.

SECTION 17. POLITICAL ACTIVITY. No changes

SECTION 18. DISCLOSURE.

A and B: Accepted by consensus, "or before the January 11th of each year.

Referring to B, the second sentence refers only to appointed officials filing an amended statement of economic interest, and the question of whether employees and volunteers should be added came up. Mr. Shaffer said employees do file amended statements.

B. By consensus, the second sentence will include Employees and Volunteers.

C.3. Proceeding should be "preceding"

In response to a concern that Subsection D appeared to contradict what was previously stated, Mr. Shaffer said D is intended to capture any mid-year changes. He suggested that in A include, "Thereafter, statements of economic interest shall be filed on an annual basis on or before January 11th of each year. Disclose statements shall be amended to reflect a change in circumstance pursuant to Subsection D below.

Action: D. Delete the entire first sentence and include, "A person who undergoes a change in those economic interests that are required to be disclosed by this section shall file the amended statement in the same manner as required by Subsections A and B of this section within ninety (90) days of the date of change in circumstances requiring filing.."

So moved by Ms. Kaye and Ms. Maison seconded. The motion passed without opposition.

A & B establish the concept that an annual statement is necessary as follows:

A. After first sentence insert: ~~Amended~~ Thereinafter, statements of economic interest shall be filed on an annual basis before January 11th of each year.

B. After first sentence insert: Thereafter, appointed officials, employees, and volunteers shall file statements of economic interest on an annual basis before January 11th of each year.

The above changes for A & B were accepted.

SECTION 19. COERCION.

C.4. Delete "this."

SECTION 20. REPORTING AND RESOLVING ALLEGED ETHICS VIOLATIONS.

Mr. Coplans expressed concern that language appears to have been dropped from F.1, and the minutes do not reflect the deletion. "Provide advance written notice which shall include the information set forth below ..." The purpose of the phrase is to advise what the notice of the respondent is. This gives guidance to the respondent. The language originally was within parentheses.

The following amendments were accepted:

F. 1. Determine

Following F.1.f) include a sentence that states: "In addition to the time, date and place of the hearing, the notice of public hearing shall advise the Respondent of the rights and obligations set forth in this paragraph."

Advocating consistency, Ms. Maison requested staff either use "complaining party" or "complainant" throughout the document.

Check spacing between F 1. f) and 2.

In Section H, 1-11 each clause will start in lower case.

SECTION 21. COUNTY ETHICS BOARD.

A. What is the purpose of the parenthetical comments?. Parenthetical statements are an aside and commas rather than parens were recommended. Although the parens are not ideal, it was agreed that they simplified the sentence.

A question of whether "citizen" was necessary and perhaps "public" member is more appropriate.

A. There was consensus to strike "citizen" in the second sentence and remove the comma following "appointed."

SECTION 22. RIGHT OF APPEAL. No changes

SECTION 23. NON-RETALIATION.

No hyphen is necessary the first time good faith is used in the first sentence.

There was consensus to approve the sentence starting, "All Elected Officials...against anyone for reporting a claim in good faith. ~~of violation.~~

SECTION 24. RESTRICTIONS ON THE BOARD OF COUNTY COMMISSIONERS: ADMINISTRATION OF THE PERSONNEL SYSTEM, MANAGEMENT.

Mr. Rosanbalm championed removing the entire section stating these are the responsibilities and restrictions of the BCC and should not be included here.

Mr. Shaffer said the section is a foundational statement on the division of labor that was the result of some unfortunate times that the County experienced prior to the adoption of this ordinance. There was an individual commissioner who directed staff to engage in conduct that was inappropriate – paving a private church parking lot. He suggested maintaining the language that is paramount in running the County and only exists within this code. During on-boarding and training for existing and new County Commissioners this is highlighted.

SECTION 25. PENALTIES.

D. Margins need attention.

SECTION 26. REPEAL. No changes

SECTION 27. EFFECTIVE DATE. No changes

Process Forward:

Following the incorporation of the changes made today, a copy will be forwarded to Ms. Maison to bold all defined terms.

The ordinance will be placed on the BCC agenda for authorization to publish title and general summary. If the BCC decides to authorize title and general summary, a meeting will be held following notice as required by law. It is possible the item can be on the agenda for the November 9th or 30th meeting. The meeting will probably be virtual.

Once the changes have been made and Ms. Maison completes the bolding, a copy will be sent via Ms. Romo to the members.

VI. Matters from the Board

Mr. Coplans noted that there were a couple of items that Mr. Lockhart had agreed to follow up on at the August meeting that have not occurred: to wit, a flowchart that outlines the complaint process and how a report is issued regarding a complaint. Ms. Maison noted that Mr. Lockhart was also going to check on the release of non-public or confidential information and who gives that authorization.

Mr. Shaffer said staff can work on a flowchart to include in the packet for the BCC as an informational item. With regard to who provides the report, the County Attorney does. Regarding the confidential information, Mr. Shaffer said there are different people with that authority depending on what the information is. Attorney-client information could only be released with the approval of the BCC because the privilege belongs to the County. A decision to release other confidential information – protected health information based upon a valid received release from someone who received medical care from the jail or fire department, will be handled at a staff level through the Attorney's Office. Who authorizes a release will vary upon the circumstances.

Mr. Coplans noted that the redline draft that was used today was difficult to follow because it did not track all of the changes.

Action: Mr. Coplans moved to approve the final document for submission to the Board of County Commissioners. The motion was seconded by Ms. Kaye and Mr. Rosanbalm and passed by unanimous [5-0] voice vote. .

Mr. Rosanbalm said from this point out, the only changes permitted are typographical.

Ms. Romo said once the document is finalized she will forward copies to the Board members.

VII. Matters from the Public – None were present

VIII. Adjourn

Prior to adjourning, the Board thanked staff for their assistance throughout this process.


With no further business and having completed the agenda, Mr. Rosanbalm moved to adjourn and Ms. Kaye seconded. The motion carried and the meeting was adjourned at 5:25 p.m.

Approved by:



Carol Thompson
Ethics Board President


Respectfully submitted:


Karen Farrell, Wordswork

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

ETHICS BOARD MINUTES
PAGES: 11

I Hereby Certify That This Instrument Was Filed for
Record On The 2ND Day Of December, 2022 at 09:25:59 AM
And Was Duly Recorded as Instrument # 2002362
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark
Deputy  County Clerk, Santa Fe, NM

