

ERIE COUNTY BOARD OF ETHICS
95 Franklin St. 6th Floor Buffalo NY 14202,
Steven Schwartz, Chair

Annual Report of Activities for 2015

Executive Summary: The Erie County Board of Ethics provides an Annual Report of Activities to the Erie County Legislature and County Executive. The report identifies the legislative authority, powers and duties of the Board, membership and frequency of meetings. The Board made the following specific recommendations to the Legislature which were acted upon in late December: to require annual financial disclosures from those no longer serving as employees or board members and to allow the Board to update the Financial Disclosure Form. The Board previously recommended amending the Code of Ethics to include issues of nepotism, and to notify individuals at their time of appointment or election of the requirement to file Annual Financial Disclosures.

The Board received complaints about alleged ethical violations, requests for disclosure under FOIL and requests for opinions or actions. This included complaints about accuracy of financial disclosures, and issues outside the jurisdiction of the Board. The Board also provided opinions on accepting travel and conference monies and changes in Board policies and procedures. The Board also received and reviewed all Financial Disclosure Forms and sent follow-up letters identifying potential conflicts of interest, incomplete forms and requested additional information on solicitation of gifts and errors in initial submissions. The 2015 Financial Disclosure Forms will include notices about change in FOIL disclosure practices and updated financial categories.

The Erie County Board of Ethics is an independent administrative unit of Erie County. The Board's powers and duties are derived from the County Code and New York State Municipal Law Article 18. Section 10 (d) of the Code provides that "the Board shall be the repository for completed annual statements of financial disclosure required by this local law." Erie County employees who are elected officials or in policy-making positions or able to make County policy are required to annually complete an Annual Statement of Financial Disclosure for the County of Erie. Those who must file also include members of administrative boards, chairs of county political parties, and candidates for elective offices.

The Erie County Board of Ethics was established and exists pursuant to the provisions of Article 19 of the Erie County Code, as amended. The Board is charged with enforcing and implementing the provisions of the Ethics Code of the County of Erie pursuant to operating procedures that govern the Board. The Board shall have the power and duty to:

- A. Initiate and receive complaints of violations of any of the provisions of this chapter;
- B. Conduct investigations, inquiries and hearings concerning any matter covered by this chapter;
- C. Subpoena persons or documents and, by a majority vote, issue subpoenas to the fullest extent authorized by law;
- D. Determine whether to investigate and whether to act upon any particular complaint;
- E. Request the assistance of other appropriate agencies in conducting investigations;
- F. Consult with County agencies, officials and employees on matters involving ethical conduct which are specific to the County of Erie Board of Ethics;
- G. Recommend such legislative action as it may deem appropriate to effectuate the policies within this chapter;
- H. Promulgate rules and regulations for the conduct of Board of Ethics activities, including

- procedural rules consistent with the requirements of due process of law, 310(g) page 41;
- I. Prescribe forms for the disclosure and registration of information as provided in this chapter;
 - J. Render advisory opinions with respect to the provisions of this chapter;
 - K. Advise any individual whose acts are the subject of a complaint to the board and consult with such individual early in the process;
 - L. Accept and consider complaints of violations of this chapter, and offer recommendations with respect to remedies for violation of that chapter; and
 - M. Provide an annual report to the Erie County Legislature and the County Executive with respect to the actions of the Ethics Board during the preceding calendar year.

For 2015, the following served as members or staff of the Board:

Steven Schwartz, Chair
 Chris Trapp, Vice Chair
 Kim Bowers, Secretary
 Anna Falicov
 Rebecca Town
 Jeremy Toth, Ex-Officio, Department of Law
 Tami Burns-DiCioccio, Administrative Staff

The Board met eight times during 2015. The following were important issues dealt with by the Board during this period:

1. Recommendations to the Legislature:
 - a. The Board again recommends that the Legislature amend the Code of Ethics to include issues of nepotism. Model language is included from the 2014, City of Lockport Code of Ethics that added the following: *§ 18-15 Nepotism. Except as otherwise required by law: A. Effective *****, no municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board. Effective *****, no municipal officer or employee may supervise a relative in the performance of the relative's official powers or duties.*
 - b. The Board again recommends that, at the time of appointment or election, elected officials, affected employees and board members should be notified of the requirement to file Annual Financial Disclosures with the Board.
2. Communications: The Erie County Board of Ethics website <http://www2.erie.gov/ethics/> and email erieethicsboard@gmail.com continue to be updated to improve public communication directly to the Board. Kim Bowers and Tami Burns-DiCioccio coordinate Website updates, including meeting schedules, agenda, minutes and the Financial Disclosure Forms.
 - a. Website updated with a new section for 2015 meeting minutes, future meeting dates and 2014 Ethics Disclosure Form. The Board added a FOIL Requests Notification on Website: *"As a part of its responsibilities, the Board of Ethics requires all Elected Officials, candidates for Elected Office, Appointees and County employees who serve in a policy making capacity to annually fill out an Annual Statement of Financial Disclosure. The Board reviews those statements to identify any potential conflicts of interest and addresses related concerns. If you would like to request a copy of an individual's form and related correspondence, please submit a request pursuant to New York's Freedom of Information law by clicking on the "Contact Us" link and send via email."*
 - b. Communications were received that concerned completion of the Disclosure Form, denial of request to accept State form in lieu of filing County Disclosure Form and questions from individuals who were required to file the Disclosure. There were also complaints about alleged ethical violations, requests for disclosures under FOIL and requests for opinions or actions (see

below). Anonymous written accusations that were received lacked information or clarity and were therefore impossible to investigate.

- c. The 2014 Annual Activity Report was submitted to the Legislature and County Executive. The Chair and Vice-Chair testified before the Legislature about proposed changes to the Code which were subsequently adopted. Follow-up communication with Legislature staff regarding authority to revise Annual Financial Disclosure Form and proposals for funding the operations of the Board (filing fees, investigation, travel to meeting expenses) estimated at \$2500 annually.
- d. The Legislature passed amendments including the following:

"10(h). [The County Executive shall, subject to section 19 of the Erie County Code, provide staff and supplies necessary for the ethics board to perform its stated objectives.]" The Board submitted proposal for inclusion in Personnel Department 2016 Budget.

3. FOIL Requests, Policies and Procedures:

- a. Future reports requested under FOIL for Financial Disclosure Forms may be obtained personally, by mail or email. The Board reviewed the Erie County Legislature's Resolution of December 20, 1990 regarding the Erie County Board of Ethics Rules Governing Annual Statement of Financial Disclosures that outlines a procedure for public inspection of disclosures. It was determined that Freedom of Information Laws (FOIL) and procedures consistent with the past practices of the Board for public requests for records preempt this resolution. Pursuant to that, the Financial Disclosure forms requested, with specific financial categories redacted, were mailed. A practice has been established in which the board will inform those affected when a FOIL request has been made including names of those who made the request.
- b. The Board changed its policy to disclose all information (except filer's home address and names of unemancipated children) including specific financial categories of disclosed assets. This will be communicated in the cover letter to all those filing disclosure forms for 2015 year.
- c. The following FOIL requests were submitted and answered: Paul Wolf for Chris Jacobs' Financial Disclosure; Matt Spina (Buffalo News) for Sheriff Howard; Alan Bedenko for Chris Grant; Dan Ward for Mark Poloncarz, Chris Jacobs, Timothy Howard, Stefan Mychajliw, Edward Rath and Michael Szukala; Patrick Kennedy for Ted Morton and Steve Brown (WGRZ) for Ted Morton.

4. Complaints and requests for investigations:

- a. Began investigation requested by Zellner of Ted Morton's disclosures for 2013 and 2014.
- b. Unable to investigate Tubinis complaints against an attorney because this is beyond the scope of the Erie County Board of Ethics. Referred complainant to Erie County Bar Association.
- c. Advised D'Aquino to consult an attorney and identify school district policies and procedures for filing complaints regarding alleged ethical violations of West Seneca School Board member. Complainant was asked to submit specifics, although the Ethics Board may lack jurisdiction.
- d. Complaint from Brant resident was outside of Board jurisdiction and the matter was subsequently resolved.
- e. Complaint regarding staff of Welfare to Work Program was resolved without action.
- f. Complaint regarding Erie Unit - Local # 815 CSEA Grievance (Central Police Services) was outside of Board jurisdiction and no action was required.

5. Request for Opinions:

- a. Regarding Walker request to attend RMI Leap Workshop, the Board advised that attendance constitutes participation in an educational program as an invited guest. Attendance, with expenses paid (no honorarium) is proper with supervisory approval and subsequent listing on 2015 Financial Disclosure Form.
- b. The following were requests by a community member for changes in Board policies or procedures:

- i. *“Post the financial disclosure forms of all Erie County elected officials on-line for interested members of the public to view without any information being redacted.”*
 - ii. *“Can the Erie County Board of Ethics revise their disclosure form to utilize the more detailed financial categories that the state disclosure form contains?”*
 - c. Advised approval for Funding Travel for Leap Participant, Eric Walker, Public Works.
 - d. Chair provided guidance to Bonnie Lawrence, County Environment and Planning to insure transparency and avoid conflicts of interest in utilizing a grant from NYSERDA.
- 6. Financial Disclosures – Letters were sent to department heads February, 2015 requesting lists of employees and board members required to file 2014 disclosure forms. Changes were made to previous letters and forms to increase clarity and reduce errors and the need for follow-up letters. Directions clarified the definitions of policy-making positions. The forms were returned May 15, 2015.
 - a. For the second year, all 290 of the required disclosure forms were returned without the necessity of additional written notices. All but six disclosures were received on time. Department heads and commissioners were notified and all six delinquent and three incomplete disclosures were received. All Disclosures were reviewed for completeness and clarity.
 - b. The Board reviewed all of the individual disclosure forms for completeness and possible ethical violations. Six required further information for clarification or possible action including warnings about avoiding potential conflicts of interest that would violate the County Code of Ethics. The Board utilizes templates to request additional information, to warn of potential conflicts of interest, or to notify individuals that they had violated county law by accepting gifts in excess of allowable amounts. Copies are also sent to department heads and the District Attorney when appropriate.
 - c. Follow-up letters requesting additional information were sent to the following:
 - i. Comptroller Mychijlaw (solicitation of gifts) “Prohibited activities – No elected official, county officer or employee shall; directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.
 - ii. Legislator Ted Morton (amended 2013 disclosure). Based upon the revised 2013 Financial Disclosure Form submitted by Legislator Morton, and the Request for Investigation, the Board requested Morton provide additional information on debts listed, including identification of creditors and evidence of dates when debts were satisfied. The Board also requested information on when the error in filing was discovered. This information was received January 2016.
 - d. 2016 Changes for 2015 Disclosures or directions will include a notice to “PLEASE KEEP A COPY FOR YOUR RECORDS” and a request for e mail addresses. Information on changes in practice for FOIL releases noted above will also be provided. The categories of disclosure for assets will be updated to reflect changes in economic conditions since 1989.