

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

Annual Report of Activities for 2019

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. At public hearings, the Chair provided information in support of nepotism legislation being considered by the Legislature (see Recommendations below).

Mid-year changes in the County Code of Ethics and reporting requirements, particularly in the area of gifts received, resulted in substantial revisions to 2018 Disclosures submitted in 2019,

The Board received complaints about alleged ethical violations, requests for disclosures under FOIL and requests for opinions or actions. These included requests to investigate elected officials and county departments, as well as many issues outside the jurisdiction of the Board.

The Board also provided opinions on accepting travel and conference monies, outside employment, potential conflicts of interest, accepting gifts from county funded agencies and charities and questions concerning the Financial Disclosure Form.

The Board also received and reviewed all Financial Disclosure Forms and sent follow-up letters identifying potential conflicts of interest, incomplete forms and requesting additional information to clarify initial submissions.

The 2019 Financial Disclosure Forms (for calendar year 2018) included edits and explanations to clarify information requested and to reduce errors and the need for follow-ups. Some revisions were required under the new 2018 law governing the Code of Ethics and disclosures.

<http://www2.erie.gov/ethics/sites/www2.erie.gov.ethics/files/uploads/Financial-Disclosure-Form.pdf>

The Erie County Board of Ethics is an independent administrative unit of Erie County. The Board's powers and duties are derived from the updated Code of Ethics County Law (2-2018) 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 complete an Annual Statement of Financial Disclosure for the County of Erie by May 15. 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 Erie County Code of the Ethics, Local Law No. 2-2018 (hereafter 'Code') 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 the Code;
- B. Conduct investigations, inquiries and hearings concerning any matter covered by the Code;
- 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 the Code;
 - 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;
 - I. Prescribe forms for the disclosure and registration of information as provided in the Code;
 - J. Render advisory opinions with respect to the provisions of the Code;
 - 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 the Code, 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 2019, the following served as members or staff of the Board:

Steven Schwartz, Chair (Term 12/31/2021)
 Chris Trapp, Vice Chair (Term 12/31/2020)
 Rebecca Town, Secretary (Term 12/31/2019 reappointed to term ending 12/31/2024)
 Brian Downey (Appointed 11/2018 to complete term until 12/31/2022)
 Ellen Kennedy (Appointed 4/2019) (Term 12/31/2023)
 Leslie Ortiz-Fogg, Counsel & Ex-Officio, Department of Law
 Vianne Uthman, Support Staff, Department of Personnel

The Board met ten times during 2019. The following were significant 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.* (In July, Chair offered testimony to Erie County Legislature Committee considering legislation prohibiting nepotism in hiring and supervision.)
 - 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 for the year they are elected or appointed.
 - c. The Board again requests that electronic signature on Financial Disclosures be allowed to facilitate electronic submission of the form, reducing time and costs.
 - d. The law requires that candidates for County offices are required to file timely Financial Disclosures with the Board of Ethics. The Board of Ethics is required to request a list of

candidates for elected office from the Board of Elections. The Board is recommending the Legislature clarify what agency is required to notify candidates of the filing requirement.

2. Communications: The Erie County Board of Ethics website <http://www2.erie.gov/ethics/> and email erieethicsboard@gmail.com continued to be updated to improve public communication directly to and from the Board. The Board Secretary and Support Staff coordinate Website updates, including meeting schedules, reports, agenda, minutes, updated Rules and Regulations and the current Financial Disclosure Form. When possible, drafts of monthly minutes are posted two weeks following meetings. Email requests are forwarded to the Chair who responds between meetings, when practicable.
 - a. Website updated with 2019 meeting minutes, future meeting dates, draft agenda and updated Annual Report, Rules & Regulations and Financial Disclosure Forms. A link to meeting recordings by Legislature staff was established on the Board website (<http://www2.erie.gov/legislature/index.php?q=erie-county-board-ethics>).
 - b. Communications were received requesting advice on completion of the Disclosure Form. There were also complaints about alleged ethical violations, requests for disclosures under FOIL and requests for opinions or actions (see below).
 - c. The 2018 Annual Activity Report was submitted to the Legislature and County Executive <http://www2.erie.gov/ethics/sites/www2.erie.gov.ethics/files/uploads/2016%20Annual%20Report%20Board%20of%20Ethics%20PDF.pdf>.
 - d. FOIL requests for Financial Disclosure Forms were received and answered. Requests were primarily for disclosures of elected officials.
 - e. The Board received communications from a county employee that they have used official letterhead, in error, in correspondence related to personal business. The Board concurred that use of the letterhead was a technical violation of the law, however it appears incidental and does not appear to be significant enough to rise to the level that further action is required. As a matter of due diligence, the Board investigated and found this was an isolated incident.
 - f. Legislator Rath appeared at a Board meeting to discuss his complaint against the County Executive for improper use of county resources for campaign events.
 - g. The Board met with the Board of Elections to ensure that candidates for County offices are notified about the legal requirement to file Financial Disclosure with the Board of Ethics. Board of Ethics is required to request a list of candidates for elected office in Erie County from the Board of Elections. The law does not clarify who is required to notify candidates of the requirement for Financial Disclosure. The Board of Ethics requested that the Board of Elections notify candidates upon filing. A letter will also be sent to candidates from the Board of Ethics as well. (see 5 d. below)
3. Complaints and requests for opinions or investigations:
 - a. The investigation of former Legislator Ted Morton's disclosures for 2013 and 2014 resulted in an issuance of \$500 fine. Mr. Morton consequently filed a suit in Federal Court disputing the authority, process and decisions of the Board in this matter. The Court granted the County summary judgement in September 2018 on the sole remaining federal rights claim (due process) and declined to address the state causes of action, instead dismissing the case. The Court will be awarded costs to in County 2020.
 - b. Request to investigate a Board member for a conflict of interest for making personal political contributions was investigated. Administrative rules and procedures already existed and were followed to identify and avoid possible conflicts. Also, any limits on an individual's right to support candidates would be inappropriate.

- c. Many complaints and request for investigations were outside the authority of the Board of Ethics. These included complaints concerning actions of Towns, attorneys, and courts and all were referred to appropriate offices. Complaints regarding the Department of Social Service were referred to the Commissioner's Office for successful resolution. All complainants were given information on other venues available to pursue their complaints.
 - d. A complaint was received relating to improper use of county supplies and disclosure of confidential information. The Board investigated the issues raised in these communications and complaints and concluded that a violation had occurred and was recognized as an unintentional matter for which no further action be taken.
 - e. The Board received a complaint claiming an improper use of County Seal in campaign literature. The Board investigated and determined that the image in question was inadvertent, unintentional and too small to be noticeable.
 - f. Legislator Rath submitted a request for investigation of County Executive Poloncarz's use of county car and security detail at "political events. Because both parties had acknowledged this complaint and commented in the public media, the Board determined that there was no longer an expectation of privacy that is the normal policy for such complaints. (see 5 iii. Below). The Board investigated and found that law enforcement identified a legitimate threat and the use of the security details at the events in question were justified by their duty to protect. That security detail also provided for the use of an unmarked vehicle wherever the County Executive was present. At the time of the events in question, the control over the deployment of the security detail rested entirely with the Erie County Sheriff's Office which received the County Executive's schedule of public appearances. As such, the Board concurred that there would be no violation under these facts.
4. Request for Opinions:
- a. Provided advice to county departments on attending conference, accepting travel and conference expenses from governmental sources to attend government sponsored conferences, securing supervisory approvals and ways to report these expenses on subsequent disclosure forms.
 - b. Advised various county officials and departments on paid and voluntary outside employment and need for avoiding potential conflicts of interest in other activities. This included accepting part-time positions in local towns and advice on declining vendor offers of free professional test preparation courses to employees.
 - c. The Board received a request for an opinion on "acceptable and unacceptable political activities" of Board members. The Board has a conflict of interest policy pursuant to section 4-7 of the Rules and Regulations that prohibits any member from being the primary reviewer of any financial disclosure of a person that the member has significant dealings with. It is the opinion of the Board that while the members of the Board of Ethics are held to a high standard, as are other officials and individuals in the County, they are not held to a higher standard with respect to political activities, contributions, or other ethical issues that may arise. To do so arbitrarily would be to improperly limit their Constitutional right to association.
 - d. On a request for an opinion regarding accepting Sabres tickets from a vendor, the Board responded that it would not be appropriate even if the tickets were disseminated to non-policy making individuals.
 - e. The Board received an inquiry regarding the Buffalo & Erie County Workforce Investment Board and whether the Ethics Board has jurisdiction requiring the filing of financial disclosures. Although the county does have the right to make appointments to the board, the Workforce Investment Board is not a county board and therefore is outside the purview of the Board.

- f. An opinion was requested regarding the County Attorney's representation of Clerk Kearns in a lawsuit in the U.S. District Court that listed the clerk in both official and personal capacities. The Board found that lawsuit was filed in his official capacity and therefore representation by the County Attorney was appropriate.
5. Financial Disclosures – Letters were sent to department heads on January 15, 2019 requesting lists of employees and board members required to file 2018 disclosure forms. Utilizing JCOPE guidance, the Chair provided clarification of the definition of “policy making” individuals required to file. All lists were returned by end of February as required.
 - a. Updates to Financial Disclosure Form from Local Law 2-2018 required substantial changes. These included the definitions of dependents, and real property holdings. Revision of gifts section added dates received and relationship to recipient. Food or beverage limitations added, and revisions made to the travel reimbursement section.
 - b. All **343** of the required financial disclosures were received after sending delinquent letters to twelve. The Board sent a letter to all delinquent filers modified to reflect changes in the law, including an increase in the potential financial penalties. The Board approved increasing the penalty for failing to file timely Financial Disclosures from \$1000 to \$2000 in the letter that is sent to delinquent individuals. Penalties were waived after timely submissions.
 - c. The Board as a whole reviewed all 343 of the individual disclosure forms for completeness and possible ethical violations.
 - d. Forty-one (41) required follow-up contacts by Chair who sent four letters cautioning against potential conflicts of interest. Follow-ups were routinely required in instances of missed questions, missed pages, unclear abbreviations and unclear descriptions of membership on Boards. (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.
 - e. A candidate for an Erie County office failed to file a Financial Disclosure upon filing petitions with the Board of Elections, in 2018. After a notification by the Board of Ethics, she responded immediately with a completed disclosure and an explanation that she had not been informed of this requirement. No action will be taken after a review showed that candidates were not originally informed of this requirement. The Board of Ethics did not receive a list of candidates from the Board of Elections that year. (See 2 g. above).
 - f. Central Police Services (CPS) and Erie Tobacco Asset Securitization Corporation (ETASC) Board members were added to those required to file disclosures.
 - g. Working Family, Green and Independent political parties are being reviewed to determine whether they meet the criteria that would require these parties to file annual Financial Disclosures with the Board.
 - h. 2019 Changes for 2018 Disclosures were made in March to clarify questions and reduce errors and the subsequent need for follow-up information. The Form is in pre-fillable format on the website but still requires actual signatures. **In the future, the Board requests that the County create an online Form able to accept an electronic signature. An electronic submission with proper signature would substantially reduce paperwork, storage and printing costs.**
<http://www2.erie.gov/ethics/sites/www2.erie.gov.ethics/files/uploads/Financial-Disclosure-Form.pdf>

6. Erie County Board of Ethics Rules & Regulations:

- a. A Public Comment period was added to the monthly meetings beginning at the June 2019 meeting.
- b. Non-Disclosure and Confidentiality Agreements were signed by all new Board members.
- c. Board reviewed the policy on confidentiality of identities of complainants, subjects of complaints and results of investigations as effected by public information (news). Where parties to a complaint or request for investigation have disclosed their role in the matter in public (i.e. public meetings or in public media) the Board may also chose to disclose the names and issues at Board meetings.

"Section 6.13 Policy of Confidentiality

Investigations and consideration by the Board of potential violations of the Ethics Code shall be conducted confidentially and shall not be disclosed to the public, except as necessary to carry out the powers and duties of the Board. The final determination of the Board on an Investigation shall be made available to the public with such deletions as may be necessary to prevent disclosure of any information the Board determines to be confidential, in accordance with the Freedom of Information Act, as amended." Ethics Board Policy & Procedures

- d. The Board determined that substantial email requests should be substantiated by receipt requests for communications.
- e. The Board established a Records Retention Policy of seven (7) years

7. Other Issues:

- a. In 2019 the Personnel Department required submission of an Annual Erie County Code of Ethics Employee Disclosure Forms. The Personnel Department sends employees this financial disclosure for those not required to file the Annual Form from the Board of Ethics. This has created some confusion. The Board of Ethics recommends that these completed forms be reviewed by Departments before filing in personnel files.
- b. On 9/20/19 The Chair presented a training session at the Ethics for New County Supervisors Training on ethical issues including nepotism in promotion and supervision. There was consensus that similar trainings should be offered on a regular basis.