

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

Annual Report of Activities for 2020

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. COVID restrictions during 2020 necessitated some delays of meetings, one meeting held via Zoom (with appropriate public notices) and change of in person meeting space to larger rooms within the Rath Building. Furthermore, mailings of Financial Disclosures were delayed and the date required for submission was extended one month to June 15, 2020.

The Board received complaints about alleged ethical violations, requests for disclosures under FOIL and requests for opinions or actions. These included requests to investigate use of county resources for private use as well as some issues outside the jurisdiction of the Board.

The Board also was asked for or provided opinions on potential conflicts of interest of current or future employees, accepting gifts from private sources in gratitude for public service and resolving conflicts between a municipal code of ethics and court practices. The Board also answered 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 additional information to clarify initial submissions.

The 2020 Financial Disclosure Forms (for calendar year 2019) included edits and explanations to clarify information requested and to reduce errors and the need for follow-ups.

<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 2020, 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 reappointed to term ending 12/31/2025)
 Rebecca Town, Secretary (Term 12/31/2024)
 Brian Downey (Term 12/31/2022)
 Ellen Kennedy (Term 12/31/2023)
 Leslie Ortiz-Fogg, Counsel & Ex-Officio, Department of Law
 David Bojanowski replaced Vianne Uthman during February 2020 Support Staff,

Department of Personnel

The Board met eight times during 2020. All meetings were recorded by County Legislative staff and posted with the Ethics Board Minutes as well on the Legislature website. The April 2020 meeting was conducted virtually via Zoom under the Executive Orders of the Governor to conduct such meetings because of requirements for social distancing. Notice of this meeting was sent to local media and posted on the Board of Ethics website. This meeting was also recorded and posted on the site. The following were significant issues dealt with by the Board during 2020:

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 for the year they are elected or appointed.**
 - c. **The Board again requests that electronic signatures on Financial Disclosures be allowed to facilitate electronic submission of the form, thus 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. There were some technical difficulties in retrieving emails that resulted in some delays in receiving and responding to emails.
 - a. Website updated with 2020 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 is 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 copies of disclosures under FOIL and requests for opinions or actions (see below).
 - c. The 2019 Annual Activity Report was submitted in April 2020 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. All those whose Financial Disclosures were released under FOIL are required to receive notice when their information is disclosed. Many FOIL requests that asked for electronic copies of Financial Disclosures were unable to be honored, largely because all forms are submitted by hard copy and original signatures. Some information on minors is redacted. The Board may reconsider these requests as more forms are submitted electronically. No fees were waived for production of copies.
 - e. In August 2020, the Board received copies of the Legislature Submissions Pursuant to Erie County Code of Ethics, Disclosure of Family Members Employed by any governmental agencies.
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 awarded costs to the County in 2020. The plaintiff's attorney requested that the county waive the costs and the \$500 fine. The Board did not agree to waive the fine, but deferred the decision on waivers of attorney fees to the County Attorney.
 - b. Some complaints and request for investigations were outside the authority of the Board of Ethics. All complainants were given information on other venues available to pursue their complaints.

- c. A municipality within Erie County requested an opinion to resolve a conflict between the municipality Code of Ethics and the rules governing the Municipal Court. The issue was resolved before any opinion need be offered. The municipality does not have its own Board of Ethics and the Board, upon advice of Counsel had determined the following:
“GML Section 808(2) expressly authorizes a county board of ethics to render advisory opinions to officers and employees of municipalities wholly or partly within the county with respect to any code of ethics adopted” pursuant to GML Section 807 (unless such municipality has enacted its own ethics board), and Section 10(e) the Erie County Code of Ethics (Local Law No. 2 of 2018) generally provides that the County Ethics Board ‘shall have all the powers and duties ascribed to a Board of Ethics by article 18 of the General Municipal Law.’
“However, the balance of the Erie County Ethics Law appears to contemplate only issuing such advisory opinions with respect to the County Ethics Code, and Section 5 of the Board’s Rules and Regulations even more clearly appears to expressly limit the jurisdiction of the board to issues arising under the County Ethics Code and to requests for advisory opinions from County officials. The municipality has a Code of Ethics but no Board of Ethics. Our general conclusion is that if a municipality, as opposed to an individual, makes a request for a review, the language in the State law applies regardless of the County law which means that we can issue advisory opinions for municipal corporations that do not have their own Ethics Boards.”
- d. Request for opinion from a County department on whether a candidate for employment in a position can review contracts with an agency on which he serves as a member of their Board of Directors. The Board advised that this was a conflict of interest and that the candidate should resign from the Board before employment.
- e. Request for investigation of elected official’s use of county resources for personal political campaign purposes. This was resolved with the official’s agreement to cease providing links from their official County sites to their campaign or other personal social media sites.
- f. The Board offered an opinion to a County department that they should not accept the gift of free admission to a private park offered in gratitude for their public work.
- g. The Board provides continued 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.
4. Financial Disclosures – Letters were sent to department heads on January 2020 requesting lists of employees and board members required to file 2019 disclosure forms. Only 80% of departments returned their list by the due date of February 15, although all were submitted by end of February.
- a. Only minor updates to the 2019 Financial Disclosure Form were made to the form for purposes of clarification and to reduce errors. Later in 2020, the Board made similar minor edits to the 2020 form and moved to allow the 2020 signed Forms (to be submitted in 2021) to be able to be submitted via scan or fax. All forms must be signed. The Board was informed about the current barriers to use of electronic signatures on the forms (See recommendations to the Legislature above.).
- b. The printing and distribution of the Financial Disclosure Forms April 1, 2020, required by law, by mail or by personal service, was delayed during the pause on County business during the pandemic. The Board extended the deadline for return of Forms for one month to June 15, 2020.
- c. All **319** of the required financial disclosures were received after sending delinquent letters to six filers, imposing a penalty of \$2000 which could be waived upon receive of their Financial Disclosures. All penalties were waived after timely submissions.

- d. The Board as a whole reviewed all 319 of the individual disclosure forms for completeness and possible ethical violations.
- e. Twenty-nine (29) disclosures required follow-up contacts by Chair. Follow-up communications were routinely required in instances of missed questions, missed pages, unclear abbreviations and unclear descriptions of membership on Boards. The Chair sent three letters cautioning against potential conflicts of interest These three letters to elected officials or Board members cautioned them about avoiding conflicts of interest and informing them about any necessary recusals and requirements to report these potential conflicts to the Clerk of Legislature and the County Attorney. (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.)
- f. Working Family, Green and Independent political parties continue to be reviewed to determine whether they meet the criteria that would require these parties to file annual Financial Disclosures with the Board.
- g. The Financial Disclosure 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>

5. Erie County Board of Ethics Rules & Regulations:

- a. The Board maintained the policy on confidentiality of identities of complainants, subjects of complaints and results of investigations as effected by public information (i.e., 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

6. Other Issues:

- a. Since 2019 the Erie County Personnel Department requires completion of an Annual Erie County Code of Ethics Employee Disclosure Forms for all employees. 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. **Although this is not in the purview of the Board, the Board of Ethics continues to recommend that these completed disclosure forms be reviewed by Departments before filing in personnel folders.**
- b. 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 the Board may participate in similar trainings in the future.