

# **ERIE COUNTY BOARD OF ETHICS**

**95 Franklin St. 6<sup>th</sup> Floor Buffalo NY 14202,**

**Chris Trapp, Chair**

## **Annual Report of Activities for 2021**

**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 2021 necessitated a change of in-person meeting space to larger rooms within the Rath Building.

The Board received complaints about alleged ethical violations, requests for disclosure under FOIL and requests for opinions or actions. These included requests to investigate the conduct of elected officials, the use of county resources for personal benefit 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. The Board answered questions concerning completing the Annual Financial Disclosure Form. Board also received and reviewed all Annual Financial Disclosure Forms. The Board contacted filers with incomplete forms and sought additional information to clarify initial submissions. The Board also sent follow-up letters to specific individuals identifying potential conflicts of interest.

The 2021 Financial Disclosure Forms (for calendar year 2020) included edits and explanations to clarify information requested and 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 2021, the following served as members or staff of the Board:

- Steven Schwartz, Chair (Term 12/31/2021)
- Chris Trapp, Vice Chair (Term 12/31/2025)
- Rebecca Town, Secretary (Term 12/31/2024) resigned April, 2020 and replaced by Heather Gresham on May, 2020 to complete term
- Brian Downey, Secretary, April-December, 2021 (Term 12/31/2022)
- Ellen Kennedy (Term 12/31/2023)
- Erin Polisani, Counsel & Ex-Officio, Department of Law, January-February, 2021
- Leslie Ortiz-Fogg, Ex-Officio, Department of Law, March-December 2021
- David Bojanowski January-September 2021 replaced by Kayla Witherspoon, September-December, 2021 as Support Staff, Department of Personnel

The Board met nine times during 2021. All meetings were recorded by Ross Kostecky, County Legislative staff and posted with the Ethics Board Minutes as well on the Legislature's website. The following were significant issues dealt with by the Board during 2021:

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 law requires that candidates for County offices are required to file timely Financial Disclosure 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 again recommends that the Legislature clarify which agency is required to notify candidates of the filing requirement.**
  - d. **The Board again requests that electronic signatures on Financial Disclosures be allowed to facilitate electronic submission of the form, thus reducing time and costs.**
2. Communications: The Erie County Board of Ethics website <http://www2.erie.gov/ethics/> and email [erieethicsboard@gmail.com](mailto: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 new Website was formatted on April, 2021:

<https://www3.erie.gov/ethics/>

- a. Website updated with 2021 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 Annual Report of Activities for 2020 was submitted in April 2021 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 disclosures of elected officials and candidates for elective offices. 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, because many forms are submitted by hard copy and original signatures. Some information related to minors is redacted. The Board may reconsider these requests for electronic copies as more forms are submitted electronically. No fees were waved for production of copies.
  - e. In October, 2021, A FOIL request from MacKinnon was made for all ethical complaints against Comptroller Mychajliw. This was responded to, with copies to the Comptroller.
  - f. If a FOIL request is made in the future, the Board will identify the person making the request and what documents are being requested. We will also send a copy of the Board's response to the subject of the complaint. If the request is for a history of complaints, both the cover letter and the information request will include the disclaimer that a complaint is not evidence of an ethics violation. We will redact phone numbers from any documents provided. Our minutes will identify the complainant and the subject of the complaint.
  - g. The Board also received links to copies of the Legislature Submissions Pursuant to Erie County Code of Ethics, Disclosure of Family Members Employed by any governmental agencies.
  - h. The Board submitted a formal request to the County Executive for a Chief Ethics Officer position to manage executive functions such as answering inquiries, following up disclosures, working with departments and Boards and outlining and writing investigations for the Board. The responsibilities of the Board have expanded in the last five years since the revision of the Local Law. Members of the volunteer Board do not have, nor can they be expected to spend, the time required to manage these expanded duties in the timely manner.
3. Complaints and requests for investigations:
- a. Numerous complaints were received regarding actions and comments made by a public official at a December 2020 public protest in Niagara Square including requests for removal of said elected official. After extensive investigation and review of written materials, news accounts, photos and videos, the Board responded to complaints noting that the Board of Ethics is without the powers to enforce alleged criminal acts, including possession of a firearm on public property, which is enforced under the Penal Code, and should be directed to the proper police authorities or the District Attorney's office. Allegations of flaunting the COVID restrictions falls upon the Health Department and the appropriate police

authorities, not the Board of Ethics. A complaint that the Comptroller presented an “unacceptable threat to constituents” as a result of his behavior and comments at the public event was not supported by a video that was submitted. Furthermore, political speech of the nature presented, regardless of how offensive it may seem to some, is nevertheless protected speech under the First Amendment of the Constitution. Removal of an elected official is also not within the authority of the Board of Ethics.

- b. December 2020 the Board received a request for investigation and a complaint of public attacks on local business by the same elected official in official communications and public social media. Although these actions did occur as reported, there was no evidence of violation of the Code of Ethics.
  - c. Request for an opinion received from Legislator Vinal as to whether she could accept a part time position as ECMCC to conduct no-fault arbitration of denied bills. The Board found no conflict of interest with her position as an Erie County Legislator and advised her to avoid time that conflicts with her normal duties as legislator and recommended she recuse herself from any future conflicts and report this position on her Annual Financial Disclosure.
  - d. Request for an opinion from a County Department on whether there would be an appearance of a conflict of interest in the review of a vendor by a particular employee. Based upon the information provided, the Board advised that there was a conflict of interest. The employee was subsequently relived of this particular responsibility.
  - e. Some complaints and requests for investigations were outside the authority of the Board of Ethics. All complainants were given information on other venues available to pursue their complaints. For example, a complaint and request for investigation of alleged “public corruption” in regard to actions from Buffalo city residents and departments resulted in referral of the complainant to the City of Buffalo Board of Ethics and the judiciary with a recommendation to secure a private attorney. Other complaints are referred to the appropriate county department such as ECDSS for resolution.
  - f. The Board provides continued advice to county department on various issues.
4. Financial Disclosures – Letters were sent to department heads on January 2021 requesting lists of employees and board members required to file 2020 Financial Disclosures.
- a. Only minor updates to the 2020 Financial Disclosure Form were made to the form for purposes of clarification and to reduce errors. Later in 2020, the Board 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 hand signed. The Board reviewed the current barriers to use of electronic signatures on the forms (See recommendations to the Legislature above.). Scanned forms would be sent to a secure email address and faxed forms would be sent to a secure line.
  - b. Departments and Boards submitted lists of those required to file disclosures for 2020. The Board of Elections also provided names of possible candidates for elective offices as required by Ethics Law 2018 section 4c.
  - c. Financial Disclosure Forms were printed and distributed by mail or by personal service on April 1, 2020, as required by law.
  - d. All **325** of the required financial disclosures were received after sending delinquent letters to 15 filers, imposing a penalty of \$2000 which could be waived upon receipt of their Financial Disclosures. All penalties were waived after timely submissions. One delinquent filer, a primary candidate for elected office, submitted their form after requesting an extension. One request for a Financial Disclosure was sent in error to a former Department Board member from a previous year.
  - e. The Board as a whole reviewed all 325 of the individual disclosure forms for completeness and possible ethical violations. Mr. DiNoto, independent candidate for Sheriff, could not be located during this period, but finally submitted his Financial Disclosure that was reviewed September, 2021.

- f. Twenty-seven (27) disclosures required follow-up contacts by Chair or the Support Staff, as authorized by the Board. Follow-up communications were routinely required in instance of missed questions, missed pages, unclear abbreviations and unclear descriptions of membership on Boards. The Chair sent five letters cautioning against potential conflicts of interest. These five 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 the department heads and the District Attorney, when appropriate.)
- g. After all reviews, the Board noted ways to reduce errors and increase accuracy and made recommendations for improvement to the Financial Disclosure Form for the following year.
- h. The Financial Disclosure Form is in pre-fillable format on the website but still requires actual signatures. **In the future, the Board request 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 discloses the names and issues at Board meetings which it determined to do.  
*"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 disclosures of any information the Board determines to be confidential, in accordance with the Freedom of Information Act, as emended."* Ethics Board Policy and Procedures.
- b. After a citizen complaint to the County Attorney, the Board changed the starting time of meeting from 8:00 a.m. to 8:30 a.m. so that the citizens can participate when the Rath Building is open to the public.

#### 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 within 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 spoke to the Buffalo Rotary Club about the duties, responsibilities, and limits of authority of the Erie County Board of Ethics.