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Service by electronic means not accepted

February 11, 2011

The Erie County Legislature  
Government Affairs Committee  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

Attention: Hon. Christina W. Bove, Chair

Re: Erie County Board of Ethics

Honorable Madam:

Pursuant to the request of the Committee, we are enclosing a copy of the Rules and Regulations of the Board of Ethics for your review. One of the issues contained therein deals with subpoena powers for a hearing. We will be respectfully requesting such powers to be designated by the Legislature in order for us to fulfill what we believe are our statutory obligations.

We look forward to hearing from you with regard to the foregoing. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact us.

Very truly yours,

GRECO TRAPP, PLLC

Chris G. Trapp

CGT/bjs

Copy to: Hon. Thomas A. Loughran, Vice Chair  
Hon. Lynn M. Marinelli, Member  
Hon. Edward A. Rath, III, Member  
Hon. Raymond W. Walter, Member  
Andrew A. Kulyk, Clerk

Adopted 2/7/2011

# **COUNTY OF ERIE BOARD OF ETHICS**

95 Franklin Street  
Buffalo, New York 14202

## **RULES AND REGULATIONS**

Effective January 1, 2011

## Table of Contents

	Page
SECTION 1. RULEMAKING	1
Section 1.1    Introduction	1
Section 1.2    Rulemaking Authority	1
Section 1.3    Declaration of Policy	1
Section 1.3    Construction of Rules	3
Section 1.5    Scope of Rules	3
Section 1.6    Availability of Rules	3
SECTION 2. DEFINITIONS	3
Section 2.1    General Definitions	3
SECTION 3. POWERS AND DUTIES OF THE BOARD	4
SECTION 4. BOARD MEETING PROCEDURES	6
Section 4.1    Notice of Meetings	6
Section 4.2    Board Sessions	6
Section 4.3    Governing Procedures	6
Section 4.4    Chair	6
Section 4.5    Members/Quorum	6
Section 4.6    Minutes	7
Section 4.7    Conflict of Interest	7
Section 4.8    Majority Vote	7
Section 4.9    Telephone Conference	8

Section 4.10	Compensation	8
SECTION 5. ADVISORY OPINIONS		8
Section 5.1	Authority to Render Advisory Opinions	8
Section 5.2	Persons Authorized to Request Advisory Opinions	8
Section 5.3	Routine Questions	9
Section 5.4	Withdrawal of Requests for Advisory Opinions	9
Section 5.5	Form of Request for Advisory Opinions	9
Section 5.6	Examination of Requests for Advisory Opinions	9
Section 5.7	Draft Opinions	9
Section 5.8	Adoption of Advisory Opinions	10
Section 5.9	Reconsideration of Adopted Advisory Opinions	10
Section 5.10	Advisory Opinions and the Policy of Confidentiality	11
Section 5.11	Reliance on Advisory Opinions	11
Section 5.12	Access to Advisory Opinions	11
SECTION 6. INVESTIGATIONS		12
Section 6.1	Request for Investigation	12
Section 6.2	Effect of Filing a Request for Investigation	12
Section 6.3	Scope of Investigation	12
Section 6.4	Maintenance of Records	13
Section 6.5	Cooperation Require	13
Section 6.6	Referral of Complaints	13

Section 6.7	Content of Request for Investigation	13
Section 6.8	Staff Assistance	14
Section 6.9	Docketing of Request for Investigation	14
Section 6.10	Review of Requests for Investigation	14
Section 6.11	Notice of Investigation and Opportunity to Present Information	14
Section 6.12	Right to Representation	15
Section 6.13	Policy of Confidentiality	15
Section 6.14	Suspension of Investigation	15
Section 6.15	Hearing	16
Section 6.16	Hearing Procedure	16
Section 6.17	Hearing Officer	16
Section 6.18	Conclusion of Investigation	17
Section 6.19	Request for Reconsideration	18
SECTION 7.	RESERVED	19
SECTION 8.	LIMITATIONS ON GIFTS	19
Section 8.1	Ban on Receiving and Soliciting Gifts	19
Section 8.2	Notification of Noncompliance	19
Section 8.3	Opportunity to Respond	19
Section 8.4	Failure to Respond to Notification	20
SECTION 9.	LIMITATIONS ON POLITICAL CONTRIBUTIONS	20
SECTION 10.	MISCELLANEOUS	20
Section 10.1	Interpreters	20

Section 10.2	Accessibility	20
Section 10.3	Effect of Other Laws	20
Section 10.4	Severability	20
Section 10.5	Vacancies	21
Section 10.6	Officers	21
Section 10.7	Indemnification	21
Section 10.8	Amendments	22

## SECTION 1. RULEMAKING

### Section 1.1 Introduction

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.

### Section 1.2 Rulemaking Authority

Pursuant to Article 19 of the Erie County Code, the Board is empowered to promulgate rules for conduct of its activities, including procedural rules consistent with the requirements of due process of law.

### Section 1.3 Declaration of Policy

- A. High moral and ethical standards among the County elected and appointed officials and County employees are essential to assure the trust, respect, and confidence of the people of this County;
- B. A code of ethics for the guidance of the County elected and appointed officials and County employees will:
  - 1. Discourage the County elected and appointed officials and County employees from acting upon personal or financial interests in the performance of their public responsibilities;
  - 2. Improve standards of public service; and
  - 3. Promote and strengthen the faith and confidence of the people of this County in public officials and employees.
- C. Holding public office or employment is a public trust, and as one safeguard of that trust, the people require the County elected and appointed officials and County employees to adhere to a code of ethics;
- D. A fair and open government requires that the County elected and appointed officials and County employees conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;

- E. Any effort to benefit a person's financial interest through official action is a violation of the public trust. As long as this chapter does not interfere with the full and faithful discharge of the duties and responsibilities of a County elected or appointed official or employee, this chapter does not prevent that person from following other pursuits. It is further recognized that:
1. In a municipal corporation such as the County of Erie, elected and appointed officials and County employees are drawn from society and therefore often have financial interests in the decisions and policies of local government;
  2. People who serve as elected or appointed officials or County employees should retain the right to interests of a financial nature;
  3. Standards of ethical conduct for elected and appointed officials and County employees must distinguish between those minor and insubstantial conflicts that are unavoidable in a free society and those conflicts of interest that are substantial and material.
- F. Unethical conduct is prohibited. However, there is no impropriety if, as to a specific matter, an elected or appointed official or County employee:
1. Has a financial interest in the matter which is insubstantial or which is possessed generally by the public or a large class of persons to which the person belongs; or
  2. Performs some duty or has some influence which would have insubstantial or conjectural effect on the matter.
- G. In order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
- H. No code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
- I. Compliance with a code of ethics is an individual responsibility; thus all who serve the County have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.



Section 1.4 Construction of Rules

These rules shall be liberally construed to accomplish the purposes of the Ethics Code.

Section 1.5 Scope of Rules

These rules set forth herein shall constitute the policy and practice of the Board and shall govern activities of the Board, provided such rules are consistent with the Ethics Code.

Section 1.6 Amendments to Rules

Upon proper notice, changes in these rules may be made by a vote of a majority of the full membership of the Board at a regular or special meeting.

Section 1.7 Availability of Rules

The rules of the Board shall be on file with each of the departments under the jurisdiction of the Ethics Code and shall be available to the public from the office of the Board.

SECTION 2. DEFINITIONS

Section 2.1 General Definitions

The following terms shall have the following meanings:

- A. "ADVISORY OPINION" means a written opinion rendered by the Board, pursuant to Article 19 of the Erie County Code, concerning any subject covered by the Ethics Code.
- B. "BOARD" means the Erie County Board of Ethics as established by Article 19 of the Erie County Code.
- C. "CHAIR" means the Chairperson of the Board.
- D. "COUNTY" means the County of Erie and all government agencies of the County of Erie.
- E. "ELECTED OFFICIAL" means any elected Erie County official.

- F. "EMPLOYEE" means a person employed by the County whether part-time or full-time or by a contract of employment.
- G. "ETHICS CODE" means Erie County Ethics Code adopted \_\_\_\_\_, \_\_\_\_\_, as amended.
- H. "HEARING" means any hearing commenced by the Board for additional fact finding as part of an investigation of an alleged violation of the Ethics Code.
- I. "HEARING OFFICER" means an attorney duly licensed to practice law in the State of New York or such other individual retained by the Board who is generally familiar with due process standards and the conduct of hearings in the State of New York to conduct hearings on behalf of the Board.
- J. "INVESTIGATION" means any inquiry into an allegation or a complaint of violation of the Ethics Code.
- K. "OFFICIAL" means any elected Erie County official or appointed, non-employee member of any agency of Erie County.
- L. "PERSON" means, but is not limited to, any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing, and whether or not operated for profit.
- M. "RESPONDENT" means any person who is the subject of an investigation before the Board.
- N. "STAFF" means those persons who shall perform investigative, clerical, administrative or other duties as described and required by the Board through the Chair.
- O. "VIOLATION" means one or more acts prohibited by the Ethics Code.

Any further definitions for the terms used in these rules may be found in Article 1 of the Ethics Code and are incorporated herein by reference and made a part hereof.

### SECTION 3. POWERS AND DUTIES OF 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, for approval of the County Legislature;
- 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; and
- L. Accept and consider complaints of violations of this chapter, and offer recommendations with respect to remedies for violation of that chapter.
- M. Provide such 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.

## SECTION 4. BOARD MEETING PROCEDURES

### Section 4.1 Notice of Meetings

Meetings of the Board shall be held monthly at a regularly scheduled date and time determined by the Board and said dates and times shall be posted on the official website of the County of Erie. Special meetings may be scheduled as provided herein.

### Section 4.2 Board Sessions

The business of the Board shall be conducted in two separate sessions:

#### A. Open Sessions

To provide an open meeting in which non-confidential matters are presented to the Board and public.

#### B. Executive Session

To ensure the confidentiality of proceedings, the Board, upon majority vote, shall be permitted to meet in executive session as set forth in the Laws of the State of New York.

### Section 4.3 Governing Procedures

Whenever these rules are silent, the Board shall conduct its meetings in accordance with the current edition of "Robert's Rules of Order."

### Section 4.4 Chair

A Chair of the Board shall be elected by a majority of the full membership of the Board and shall serve as Chair for a period of one year from the date of election. Elections for Chair shall be held in the month of January at the regularly scheduled monthly meeting of the Board.

### Section 4.5 Members/Quorum

- A. The Board shall consist of five (5) members recommended by the County Executive and appointed upon the advice and consent of the Erie County Legislature serving such staggered terms as may be set by the Erie County Legislature and County Executive plus one (1) employee of the County who shall not be a voting member of the Board.

- B. Three (3) voting members of the Board present at a meeting or hearing shall constitute a quorum. No meeting shall continue in the absence of a quorum.

#### Section 4.6 Minutes

- A. Minutes of both the open and executive sessions shall be kept by the Staff.
- B. The minutes of all open Board meetings shall be available to the public for inspection at the office of the Board during regular office hours. Upon request, a copy of the minutes of any open session meeting of the Board shall be provided to the public at no more than cost.
- C. The minutes of all Board meetings conducted in Executive Session shall be available only to members of the Board and authorized personnel; provided, however, that this procedure is conducted consistent with the Laws of the State of New York.

#### Section 4.7 Conflict of Interest

It shall be the policy of the Board that no member shall participate in the consideration of or vote on any matter if that matter or vote:

- A. Concerns a business or legal relationship of that member;
- B. Involves a person with whom the membership has or expects to have significant dealings in a public or private capacity; or
- C. Would cause the appearance of impropriety on the part of that member or of the Board in general.

A conflict of interest shall be determined by a majority of all disinterested members.

#### Section 4.8 Majority Vote

A majority of the Board present at a meeting, provided there is a quorum, can render a determination on matters presented to the Board, except that (1) no final determination or recommendation regarding an Investigation conducted by the Board pursuant to Section 5 of these rules shall be rendered without the approval of a majority of the full membership of the Board; and (2) no amendments to these rules, in accordance with Section 1.5 of these rules, shall be

made without a majority vote of the full membership of the Board at a regular or special meeting.

#### Section 4.9 Telephone Conference

Members of the Board may participate in any meeting of the Board through the use of a conference telephone or other communications equipment by means of which all persons in the meeting can hear each other. Although a member may participate in such meeting, such member may not vote unless videoconferencing with the particular member exists.

#### Section 4.10 Compensation

Members of the Board shall receive no compensation for their service, but each member may be reimbursed for expenses reasonably incurred in the performance of Board duties upon prior approval of the Board.

### SECTION 5. ADVISORY OPINIONS

#### Section 5.1 Authority to Render Advisory Opinions

The Board shall render Advisory Opinions with respect to the provisions of the Ethics Code based upon a real or hypothetical set of circumstances, when requested in writing by a person authorized to request an Advisory Opinion as stated in Section 4.2 below.

#### Section 5.2 Persons Authorized to Request Advisory Opinions

The Board has authority to render Advisory Opinions based on requests from:

- A. Officials, Employees, or candidates for County office;
- B. former Officials or Employees while governed by the Ethics Code;
- C. attorneys making requests on behalf of their clients who are persons governed by the Ethics Code;
- D. County contractors;
- E. any other person who falls under the jurisdiction of the Board;

- F. any other person who has personal and direct involvement in the subject matter of the request.

### Section 5.3 Routine Questions

Routine questions and inquiries about the Ethics Code may be answered by the Staff. Staff shall keep records of its handling of such routine questions and inquiries. Summaries of the query file shall be submitted to the Board at regular intervals.

### Section 5.4 Withdrawal of Requests for Advisory Opinions

A person requesting an Advisory Opinion may withdraw such a request at any time. Such a withdrawal, however, in no way affects the Board's power to continue its own inquiry into the activities in question.

### Section 5.5 Form of Request for Advisory Opinions

To receive an Advisory Opinion from the Board, a request must:

- A. be from a person authorized to make such a request as set forth in Section 4.2;
- B. contain clear statement of facts or hypothetical circumstances in sufficient detail to aid in the formation of an Advisory Opinion; and
- C. concern the application of the Ethics Code.

### Section 5.6 Examination of Requests for Advisory Opinions

- A. The Chair and the Staff will review each request for an Advisory Opinion to determine whether it satisfies all requirements of Section 4.5 of these rules.
- B. If the Chair, in consultation with the Staff, determines that a request has not satisfied the rules governing requests, the requesting person shall be notified by a letter explaining why the request was unacceptable. The Board shall be notified of all such rejections of requests.

### Section 5.7 Draft Opinions

- A. Working drafts of Advisory Opinions shall be prepared by the Staff and shall be confidential.

- B. When a working draft of the Advisory Opinion is completed, copies will be delivered to each Board member.
- C. If, after discussion of the draft Advisory Opinion, the Board determines that additional information is needed, the Board may request that the Staff obtain such additional information.

#### Section 5.8 Adoption of Advisory Opinions

A quorum of the Board will consider a draft Advisory Opinion and the evidence upon which it is based in a timely fashion. The draft Advisory Opinion will be adopted if approved by a majority of a quorum of the Board at a regular or special meeting of the Board or, if necessary for reasons of timeliness, by a majority of the full membership of the Board as determined by a poll taken by Staff between meetings. Upon adoption by the Board, the Advisory Opinion shall be issued bearing the date, case number and signature of the Chair. The Advisory Opinion shall include notice of the right to request reconsideration of the Advisory Opinion in accordance with the provisions of these rules. A copy of the Advisory Opinion shall be sent to the person who requested the Advisory Opinion, and to the subject of the Advisory Opinion, if different.

#### Section 5.9 Reconsideration of Adopted Advisory Opinions

- A. The person requesting an Advisory Opinion or the person whose actions are the subject of an Advisory Opinion, if different, may request a reconsideration of any decision of the Board regarding an Advisory Opinion by sending written notice to the Board within twenty (20) days of that decision. Such notice must contain an explanation of material facts or circumstances which were not before the Board in its deliberations on the Advisory Opinion.
- B. No requests for reconsideration shall be reviewed by the Board if received more than twenty (20) days from the date of the Board decision, except at the discretion of the Board.
- C. A timely request for reconsideration shall be forwarded to the Board by Staff in time for consideration at the next Board meeting after receipt of the request. If the Board determines that these additional facts may alter its Advisory Opinion, it may instruct the Staff to redraft the Advisory Opinion for later consideration.



- D. If the Board finds that these material facts or circumstances do not alter its decision, it shall deny the request and so notify the person requesting such reconsideration.

#### Section 5.10 Advisory Opinions and the Policy of Confidentiality

- A. The identity of a person requesting an Advisory Opinion and the identity of any person whose conduct is involved in the set of circumstances described in the request, shall remain confidential. However, any person may waive his or her confidentiality by filing written notice with the Board.
- B. A person whose conduct is the subject of an Advisory Opinion may disseminate that Advisory Opinion, provided that the person does not reveal the identity of any other person whose conduct is involved in the set of circumstances described in the request unless such other person waives the confidentiality of his or her identity.
- C. The Board may disseminate any Advisory Opinion provided that the confidentiality requirements of the Ethics Code and these rules are observed.

#### Section 5.11 Reliance on Advisory Opinions

- A. An Advisory Opinion rendered by the Board may be relied upon by
  - 1. any person involved in the specific transaction or activity with respect to which such Advisory Opinion is rendered; and
  - 2. any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such Advisory Opinion is rendered.
- B. Any person who relies without Board approval on an Advisory Opinion under the circumstances other than those set forth above risks a possible violation of the Ethics Code.

#### Section 5.12 Access to Advisory Opinions

- A. Advisory Opinions shall be made available to the public, during regular business hours of the office of the Board, 9:00 a.m. - 4:00 p.m. Monday through Friday, provided that the confidentiality requirements of the Ethics Code are observed.

- B. Every Advisory Opinion adopted in accordance with the provisions of Section 4.8 above shall be deemed a public record of the Board and subject to the requirements of the New York Freedom of Information Act.
- C. Any person may obtain copies of Advisory Opinions from the Board upon request at a cost of 25¢ per page. The cost of copies shall be paid before the person making the request may receive the copies.

## SECTION 6. INVESTIGATIONS

### Section 6.1 Request for Investigation

The Board shall receive written complaints of alleged violations of the Ethics Code for the purpose of Investigation.

### Section 6.2 Effect of Filing a Request for Investigation

The filing of a request for Investigation or the failure to file a request for Investigation with the Board does not bar any person from seeking any other remedy that may be provided by law.

### Section 6.3 Scope of Investigation

A Board Investigation may include, but is not limited to:

- A. Interviews with or requests for additional information from the person filing the request for investigation;
- B. Requests for cooperation from County agencies, Officials or Employees reasonably related to the subject of the Investigation;
- C. Interviews with or requests for information from the respondent or any other person reasonably related to the Investigation;
- D. Subpoenas for information when the persons involved in the Investigation fail to cooperate. The Chair shall have the authority to issue subpoenas on behalf of the Board. Service of subpoenas shall be in accordance with the applicable statutory Rules.

An Investigation of an alleged violation of the Ethics Code shall be completed no later than one (1) year from the date the Investigation was initiated; provided that, the time during which the Board has suspended its Investigation in

accordance with Section 5.14 of these rules shall not be counted toward the one (1) year. The Board may extend the one (1) year time limit for completion of the Investigation when there is good cause shown to warrant such an extension.

#### Section 6.4 Maintenance of Records

Once a person knows or has reason to know that he or she is the subject of an Investigation, the person shall preserve all records and other material which may be relevant and necessary to the case until the matter has been closed. Failure to preserve records shall be a violation of Section 2.1 of the Ethics Code and the violator shall be subject to the penalties as set forth in the Ethics Code.

#### Section 6.5 Cooperation Required

County agencies, Employees and Officials shall cooperate with the Board in the Investigation of alleged violations of the Ethics Code to the extent permitted by law. Failure to cooperate could result in employment sanctions. Upon written request, information necessary to any Investigation shall be made available to the Board. Alteration, modification, adjustment or destruction of evidence necessary and relevant to the Investigation shall be a violation of Section 2.1 of the Ethics Code and the violator shall be subject to penalties as set forth in the Ethics Code.

#### Section 6.6 Referral of Complaints

- A. The Board may refer the subject matter of any Investigation to the appropriate County agency for an investigation.
- B. The referral of the subject matter of an Investigation in no way affects the Board's power to continue its own Investigation.
- C. Any conflict which may arise between the procedures of the Board and the procedures of an investigating unit of a County agency shall be resolved in favor of the Board.

#### Section 6.7 Content of Request for Investigation

A request for Investigation shall be in writing and shall include:

- A. The full name and address of the person entering the request (provided that the person entering the request may ask the Board to keep this information confidential);

- B. The full name, address and telephone number (if known) of the person whose conduct is to be investigated; and
- C. A clear statement of the facts alleged to constitute the violation of the Ethics Code, including the date(s) and place(s) thereof; and the basis of the violation.

Section 6.8 Staff Assistance

In its discretion, the Staff may provide assistance in its offices to persons desiring to file a request for Investigation and may furnish forms for that purpose.

Section 6.9 Docketing of Request for Investigation

Each request for Investigation, once filed, shall be docketed and assigned a case number by the Staff

Section 6.10 Review of Requests for Investigations

- A. The Chair shall consider a request for Investigation within thirty (30) days of receipt to determine if there is reasonable cause for an Investigation. If the request is incomplete or frivolous, the Chair shall reject the request and promptly notify the complainant of the reason for such rejection. A request is incomplete if it does not contain all of the information specified in Section 5.7 of these rules. A request is frivolous if the information contained in the request is so weak, attenuated and insubstantial that the request must be deemed absolutely without merit. Notice of all such rejections shall be given to the Board.
- B. The Chair shall not initiate an Investigation on the basis of any request in which the alleged conduct, even if true, would not violate the Ethics Code or if previous decisions of the Board preclude there being any possibility of noncompliance with the Ethics Code.

Section 6.11 Notice of Investigation and Opportunity to Present Information

Prior to the conclusion of an Investigation, the Chair shall give the respondent notice of the substance of the Investigation and an opportunity to present such written information as the respondent may desire, including the name of any witnesses to be interviewed. The Chair shall also give the respondent under investigation a copy of the Ethics Code and these rules, and shall promptly respond to any procedural or substantive questions of the respondent.

## Section 6.12 Right to Representation

The respondent may be represented by a duly licensed attorney at any stage of the proceedings before the Board. Such counsel must file with the Board his or her appearance form before the Chair will discuss the case with him or her or provide him or her with information about the Investigation, or be permitted to attend a hearing on behalf of his or her client.

## 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.

## Section 6.14 Suspension of Investigation

### A. Recommendation

The Board may determine to suspend an Investigation pending compliance with conditions recommended by the Chair for supervision of the respondent(s) for a specified period of time not to exceed one year. The conditions may include, but are not limited to, the periodic reports to the Staff; satisfactory completion of a course of study; and restitution.

### B. Written Statement

Prior to the Board entering its determination to suspend an Investigation, the respondent shall execute a written statement setting forth the following:

1. the nature of the conduct under Investigation by the Staff;
2. the conditions to be imposed by the Board for the supervision;
3. the respondent does not object to the conditions imposed;

4. the respondent understands that should he or she fail to comply with the agreed conditions, the Investigation of the matter shall resume; and
5. that the respondent executes the written statement freely and voluntarily, and understands the nature and consequences of the action.

#### Section 6.15 Hearing

At its discretion, the Board may determine in the course of an Investigation that a hearing is necessary to aid it in its fact finding function. Such hearing shall be conducted by the Board or by a hearing officer designated by the Board for this purpose in accordance with Section 5.16.

#### Section 6.16 Hearing Procedure

A hearing shall be conducted in such a manner as to ensure a fair hearing, to avoid delay, to maintain order, and to ensure development of a clear and complete record. Each Board member may question any person believed to have information relevant to the Investigation. Such questions shall be limited to the issues involved in the Investigation. The hearing may provide for:

1. the prior submission of testimony and exhibits in writing;
2. the examination of witnesses under oath;
3. a limitation on the amount of time each witness may testify; and
4. a limitation on testimony which is merely cumulative.

All hearings shall be recorded stenographically. The transcript, all written testimony, all exhibits offered in connection with the hearing, all written submissions, the notice of hearing, any prehearing orders, and any findings and determination of the Board shall constitute the record of the hearing.

#### Section 6.17 Hearing Officer

The Board shall have the authority to assign hearings to a hearing officer. The hearing officer shall have the same powers and duties relating to the hearing procedure as the Board. The hearing officer shall prepare, within thirty (30) days of the conclusion of the hearing, a written report including all findings of fact based upon the testimony and evidence presented at the hearing and a discussion

of the application of the Ethics Code to the facts. The report may also contain recommendations for Board action.

The hearing officer's report shall be delivered to the Chair and the Board only.

## Section 6.18 Conclusion of Investigation

### A. Investigation Report

At the conclusion of an Investigation, the Chair shall provide a report of the Investigation to each Board member as expeditiously as possible. The report shall include a summary of the facts and evidence, discussion of the application of the Ethics Code to the facts, conclusions of the Investigation, a complete copy of all relevant documentation and transcripts of hearings, a copy of the hearing officer's report, if any, and recommendations for further Board action.

### B. No Violation Found

If, upon reviewing the report of the Investigation and the evidence underlying it and following due deliberation, a majority of the Board concludes that no further action is required, the Investigation shall be terminated. The Board may conclude that no further action is required when the Investigation shows that there is no violation of the Ethics Code has occurred. The respondent, the complainant and anyone involved in the Investigation shall be promptly served with a notice of the Board's determination of no violation setting forth the facts and the provisions of the Ethics Code upon which the determination is based.

### C. Violation Found

If, upon reviewing the report of the Investigation and the evidence underlying it and following due deliberation, a majority of the Board determines that a violation of the Ethics Code has occurred, the Board may:

1. notify the respondent and, if appropriate, recommend corrective action or a plan for compliance;
2. recommend to the appropriate appointed Official, as well as the County Executive or other Elected Official, that disciplinary or other action within be taken; or

3. recommend to the appropriate appointed Official, as well as the County Executive or other Elected Official, such other remedies as shall be appropriate.

All recommendations of the Board shall be in writing and shall be set forth with specificity, including a statement of reasons in support of the recommendations. The Board shall request notification of the final decision by the appointed Official, the County Executive or the Elected Official on the Board's recommendations.

A copy of the Investigation report and the recommendations of the Board shall be sent to respondent.

In addition, the Board may forward copies of its recommendations, Investigation report and all related documentation to the Office of the U.S. Attorney, the Office of the New York State Attorney General, and any other appropriate agency for further investigation.

#### Section 6.19 Request for Reconsideration

##### A. No Violation Found

After the Board has served a notice of its determination of no violation of the Ethics Code, the complainant may within thirty (30) days of receipt of the Board's notice, file with the Board a request for reconsideration.

##### B. Violation Found

After the Board has issued its Investigation report and recommendations in cases where a violation is found, the respondent may within thirty (30) days of receipt of the Investigation report and recommendations, file with the Board a request for reconsideration.

##### C. Content of Request for Reconsideration

The party requesting review must state with specificity the reason(s) supporting the request for reconsideration. Requests for reconsideration shall be granted only in limited circumstances, such as, but not limited to, the discovery of new, relevant evidence.



D. Grant or Denial of Request for Reconsideration

The Board shall consider the Request for Reconsideration within sixty (60) days of receipt. The Board shall promptly notify the parties of its determination. If the Board determines that there are sufficient grounds to reopen the matter, the Board shall institute further proceedings as necessary.

SECTION 7. RESERVED

SECTION 8. LIMITATIONS ON GIFTS

Section 8.1 Ban on Receiving and Soliciting Gifts

The Ethics Code imposes limitations on the solicitation or acceptance by County Employees and Officials of gifts from certain persons. The Staff may audit public disclosure records, such as lobbyist expenditure reports filed with the County Clerk, as well as any gift disclosure or reimbursement disclosure forms filed with the Board, to determine whether there is compliance with these limitations on gifts.

Section 8.2 Notification of Noncompliance

Based on the audit of such records or forms described in these rules, the Board determines that it appears that a County Employee or Official has solicited or received a gift that does not comply with the Ethics Code, the Board shall send notice to the Employee or Official of that determination. The notification shall also provide information regarding the factual basis of the determination, the Employee's or Official's opportunity to refute the Board determination, and the Board's recommendation regarding compliance if the determination is correct, and the time by which the Employee or Official must respond to the notification.

Section 8.3 Opportunity to Respond

An Employee or Official who the Board has determined may not have complied with the gift ban shall be afforded the opportunity to make a timely response to the allegation in order to demonstrate the (1) the Board's determination is incorrect; or (2) the Employee or Official has complied with the Ethics Code by returning the gift, paying market value for the gift, or giving the gift or an amount equal to its value to an appropriate charity. Nothing herein, however, shall be so construed as to imply that the Board cannot consider consequences and the circumstances surrounding the acceptance of a gift even if

the employer official has returned the gift, paid market value for the gift, or given the gift or an amount equal to its value to an appropriate charity.

Section 8.4 Failure to Respond to Notification

The case of any Employee or Official who fails to respond to notification under this section of the rules shall be referred to a quorum of the Board for further action.

SECTION 9. LIMITATIONS ON POLITICAL CONTRIBUTIONS

(RESERVED)

SECTION 10. MISCELLANEOUS

Section 10.1 Interpreters

- A. If a qualified sign language or foreign language interpreter is required at any time, the Board of Ethics shall provide one at no cost to the parties upon request at least forty-eight (48) hours in advance of the event at which it is needed.
- B. The Board of Ethics will provide a foreign language interpreter or a qualified sign language interpreter at all public meetings of the Board upon request at least forty-eight (48) hours in advance of the event at which it is needed.

Section 10.2 Accessibility

All hearings and Board sessions shall be held in buildings accessible to persons with disabilities.

Section 10.3 Effect of Other Laws

In interpreting the Ethics Code, the Board shall look to decisions interpreting other relevant laws for guidance.

Section 10.4 Severability

In the event any provision or term of these rules, or any amendment thereto is determined by a Court or other authority of competent jurisdiction to be illegal or unenforceable, such determination shall not affect the remaining provisions which shall continue in full force and effect.

## Section 10.5 Vacancies

Vacancies in any office, except that of the Chairperson, shall be filled in accordance with the applicable statutes after such vacancy occurs.

## Section 10.6 Officers

- A. The Officers of the Board shall be a Chairperson, Vice-Chairperson, and Secretary, all of whom shall be elected as hereinbefore provided for a term of one (1) year and until a successor is elected, and each officer shall be eligible for election for a maximum of three (3) successive full terms. Service for an unexpired term shall not bar an officer from serving three (3) consecutive full terms.
- B. The Chairperson shall be the chief executive officer of the Committee and shall preside at all meetings of the Board and of the officers of the Board; the Chairperson shall be a member ex-officio of all committees and shall represent the Board in its relationship with other organizations and with the community; shall sign agreements and contracts; and shall perform all other duties of the office of Chairperson.
- C. The Vice-Chairperson shall, in the absence or disability of the Chairperson, assume all duties, responsibilities, and powers of that office, and shall, if the office becomes vacant, serve as Chairperson for the balance of the term.
- D. The Secretary shall be responsible for recording the proceedings of the Board and the officers of the Committee; shall keep an accurate roll of all the members of the Board; and shall perform all of the duties of the office of Secretary.

## Section 10.7 Indemnification

Each Officer and member of the Board shall be indemnified by the County of Erie against expenses reasonably incurred in connection with any action, suit or proceeding to which he or she may be made a party by reason of being or having been such Officer or member of the Board, unless the conduct of such Officer and/or Board member with respect to the party asserting liability constituted gross negligence or was intended to cause the resulting harm to the party asserting such liability. The right of indemnification provided by this Article 10.7 shall not be exclusive of the other rights and remedies which may be available to such Officer and/or member. Such right to indemnification shall exist only if the Officer

and/or member has provided notice of any pending claim, suit, cause of action and/or liability to the County Executive, Chair and the Secretary within five (5) days after the individual seeking indemnification knew or reasonably should have known of the existence of such claim, suit, cause of action and/or liability. The County of Erie reserves the right to appoint counsel of its own choosing at its own expense upon such notification. In the event the individual seeking indemnification wishes to use other counsel, then such individual shall be responsible for all costs related to such election including, but not limited to, attorney's fees, judgments, costs and disbursements.

#### Section 10.8 Amendments

These Rules and Regulations may be amended by a two-thirds (2/3) majority vote of the members of the Board present at any Annual or a Special Meeting of the Board properly called, provided that the amendments to be presented are specifically submitted to the members of the Board with the notice of the meeting.