

# **ERIE COUNTY BOARD OF ETHICS**

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

**Steven Schwartz, Chair**

## **Annual Report of Activities for 2018**

**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 Board repeated the various recommendations to the Legislature and County Executive to modify provisions of the proposed Code of Ethics law before adoption March 30, 2018. The Board also recommended to the County Executive and Department of Personnel that employees and Board members be notified of changes in the 2018 Code of Ethics law, particularly related to prohibition on gifts. **Mid-year changes in the Code and reporting requirements may cause serious problems in revision and submission of 2018**

**Disclosures in 2019.** The Board previously recommended amending the Code of Ethics to include issues of nepotism, and to notify individuals at their time of appointment or election of the requirement to file Annual Financial Disclosures.

The Board received complaints about alleged ethical violations, requests for disclosure under FOIL and requests for opinions or actions. This included requests to investigate elected officials and county departments and included 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 about 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 2018 Financial Disclosure Forms (for calendar year 2017) 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 Ethics Code of the County of Erie pursuant to operating procedures that govern the Board. The Board shall have the power and duty to:

- A. Initiate and receive complaints of violations of any of the provisions of this chapter;
- B. Conduct investigations, inquiries and hearings concerning any matter covered by this chapter;
- C. Subpoena persons or documents and, by a majority vote, issue subpoenas to the fullest extent authorized by law;

- D. Determine whether to investigate and whether to act upon any particular complaint;
- E. Request the assistance of other appropriate agencies in conducting investigations;
- F. Consult with County agencies, officials and employees on matters involving ethical conduct which are specific to the County of Erie Board of Ethics;
- G. Recommend such legislative action as it may deem appropriate to effectuate the policies within this chapter;
- H. Promulgate rules and regulations for the conduct of Board of Ethics activities, including procedural rules consistent with the requirements of due process of law, 310(g) page 41;
- I. Prescribe forms for the disclosure and registration of information as provided in this chapter;
- J. Render advisory opinions with respect to the provisions of this chapter;
- K. Advise any individual whose acts are the subject of a complaint to the board and consult with such individual early in the process;
- L. Accept and consider complaints of violations of this chapter, and offer recommendations with respect to remedies for violation of that chapter; and
- M. Provide an annual report to the Erie County Legislature and the County Executive with respect to the actions of the Ethics Board during the preceding calendar year.

For 2018, 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)  
 Miles Gresham (Term 12/31/2022) resigned 7/2018 and replaced by  
 Brian Downey (Appointed 11/2018 to complete term of 12/31/2022)  
 Warren Galloway (Term expired 12/31/2018)  
 Leslie Ortiz-Fogg, Ex-Officio, Department of Law  
 Vianne Uthman, Support Staff from Personnel Department

The Board met nine (9) times during 2018. 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.*
- 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.
- c. The Board made various recommendations to legislation relating to the proposed new Code of Ethics. Many of these recommendations were included in the final law.
- d. The Board request that electronic signature on Financial Disclosures be allowed to facilitate electronic submission of the form, 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. Website updated with 2018 meeting minutes, future meeting dates and draft agenda and updated 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 that concerned 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 2017 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 mostly for disclosures from elected officials or related to litigation.
- e. Legislature Majority Leader Baskin met with Board to discuss ways to avoid any future conflicts of interest.
- f. Board representatives met with the Erie County Water Authority Board and staff to review the requirements for ECWA Board and staff to submit Financial Disclosure form to the Board of Ethics. The Board denied a request to modify the Erie County Financial Disclosure Form for the ECWA. ECWA was granted an extension for filing and all disclosures were submitted as required.

### 3. Complaints and requests for investigations:

- a. The investigation of 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. Additional FOIL requests had been submitted and answered.
- b. A complaint was made that an elected official did not list a spouse's employment as required on the Financial Disclosure Form. Upon investigation the official had disclosed the information to the Clerk of the Legislature as required. Furthermore, the language in the disclosure was open to reasonable interpretation.
- c. A complaint was made against a county employee that they used their position to disclose confidential information for their own personal benefit. The complainant subsequently withdrew the complaint.
- d. Many complaints and request for investigations were outside the authority of the Board of Ethics. These included complaints concerning actions of Town Boards, Department of Parole and claims of improper incarceration 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.

### 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, including accepting gifts to attend charitable events. This included advice on terminating a vendor contract with an existing county employee.
5. Financial Disclosures – Letters were sent to department heads on February 2018 requesting lists of employees and board members required to file 2017 disclosure forms. All lists were returned by end of February as required.
- a. 347 of the required disclosure forms were returned without the necessity of additional written notices. Four were not submitted on time and required additional notice. Once these late forms were submitted, fines were waived. One extension was granted for an employee on military leave. ECWA was also granted an extension to accommodate changes in their procedures. Two were waived from disclosure requirements due to extended medical leaves. All disclosures were reviewed for completeness and clarity. Additional disclosure forms from candidates for public office\* were received and reviewed. (\*Candidates who have taken the necessary steps to qualify for public office or received contributions.)
- b. The Board as a whole reviewed all 351 of the individual disclosure forms for completeness and possible ethical violations. Twenty-nine (29) required further information for clarification or possible actions: nineteen provided additional written or verbal information that helped determine that there were no conflicts; six had missing information or signatures, subsequently provided; four resulted in letters to legislators and board members warning them to avoid potential conflicts of interest that would violate the County Code of Ethics. (The Board utilizes templates to request additional information, to warn of potential conflicts of interest, or to notify individuals that they had violated county law by accepting gifts in excess of allowable amounts. Copies are also sent to department heads and the District Attorney, when appropriate.) After review, the Board waived the filing requirement for two persons unable to file due to extended medical leaves.
- c. 2018 Changes for 2017 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 online Form be 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: Rules and Regulations have been clarified to tighten the language and keep flexibility. Language was added to clarify that anonymous complaints will not be accepted but complaints do not need to be formal and can be made orally. A new section was added to include a new Non-Disclosure and Confidentiality Agreement which was signed by all Board members.
7. Other Issues: Due to concerns about the security of records, the Department of Personnel provided new lockable storage files. Open Government Report on ethics disclosures ranked Erie County Ethics Board high on standards and practices, but was not accurate in what it identified as deficiencies (<http://nyopengov.org/docs/FinancialDisclosureReport%20-withTowns.pdf>).