

## **BOARD OF ETHICS AGENDA**

March 24, 2022 at 10:00 a.m.

Board of Supervisors Room

Members: Robert Iusi, Ash Anand, Martin Deslauriers

Alternate Members: Brian Pilatzke and Diana Palmer

- I. Call to Order.
- II. Roll Call.
- III. Reading & Approval of Minutes from February 10, 2022.
- IV. Unfinished Business (if any): NONE
- V. New Business (proposed time):
  - a. Proposed 2022-23 Rules of Procedure for Board of Ethics; (1 hour)
- VI. Announcements:
  - a. Next Scheduled Meeting Date and Time.
- VII. Adjournment of Public Meeting
- VIII. Further Board proceedings Not Subject to Open Meetings Law.
  - a. Review of filed Financial Disclosure Statements;
  - b. Review of Any Ethics Complaints Received.

# **WARREN COUNTY BOARD OF ETHICS STANDING RULES AND PROCEDURES**

## ***PREAMBLE***

WHEREAS, on August 20, 2021, the Board of Supervisors enacted and adopted Resolution No. 317 of 2021 which enacted Warren County Local Law No. 6 of 2021, entitled “A Local Law Amending and Updating Local Law No. 5 of 2021, ‘A Local Law Amending and Updating Local Law No. 6 of 2014, Warren County Ethics and Disclosure Law’” commonly referred to as the Code of Ethics (hereafter, “Code”); and

WHEREAS, the Code provides for the establishment of a Board of Ethics for Warren County (hereafter, “Board”), the composition for the Board, and the scope of authority delegated to the Board; and

WHEREAS, the Code delegates to the Board responsibility to establish such rules and policies that may be necessary for the proper discharge of its duties; now, therefore, be it

RESOLVED, that the Board hereby enacts and adopts the following “Standing Rules and Procedures” (hereafter, “Standing Rules”) to supplement the rules and procedures set forth by the Code and to govern the conduct of the Board’s discharge of assigned duties.

## **STANDING RULES AND PROCEDURES**

### **1. Conduct of Meetings of the Board.**

- a. The Board shall conduct a minimum of two meetings each calendar year with the first annual meeting occurring between February 1<sup>st</sup> and February 15<sup>th</sup> and the second annual meeting shall be held prior to April 1<sup>st</sup> of each year. All other Board meetings occurring during the calendar year shall be held on dates and times fixed by the Chairperson of the Board.
- b. During the organizational meeting of the Board, which shall be conducted between February 1<sup>st</sup> and February 14<sup>th</sup> in the first year of each Board’s two-year term appointment, the members shall select a Chairperson who shall serve for the remaining portion of the term.

- c. The Chairperson shall preside at meetings of the Board, call meetings of the Board, set the agenda for Board meetings, sign documents issued by the Board, and attend to such other duties and responsibilities as set forth herein.
- d. The Board shall elect one of its members to serve as the Vice-Chair of the Board. In the absence of the Chairperson, the Vice-Chair shall execute the duties of the Chairperson.
- e. The Clerk of the Board of Supervisors, or the Clerk's designee, shall serve as the Secretary for the Board, to include posting of meetings and taking and publishing meeting minutes.
- f. The Board shall make all decisions as to an action by majority vote, to include any future amendment of these Standing Rules.
- g. All meetings of the Board shall comply, when required, with New York State Public Officers Law Article 7, also referred to as the Open Meetings Law. As set forth by the Code and these Standing Rules, the core responsibilities of the Board's power and authority results in providing advice and recommendations. The Board does not possess any power to take final action on any matter. The Board's role of giving advice, even when the advice concerns governmental matters is not itself a governmental function. For these reasons, meetings of the Board are not subject to the Open Meetings Law when the Board conducts its core functions. For example:
  - i. As an advisory body, the Board is authorized to provide advisory opinions to County officers and employees. The Board gives advice in the form of issuing advisory opinions.
  - ii. As an advisory body, the Board is authorized to receive and review Financial Disclosure Statements filed by County officers and employees and required to notify the County Administrator and members of the Board of Supervisors concerning any non-filed Financial Disclosure Statements after ninety (90) days.
  - iii. As an advisory body and quasi-judicial body, the Board may conduct investigations of ethics complaints or upon the Board's own motion, but the Board may not take any final action or enforcement action against a County

officer or employee. The appropriate disciplinary action, if any, would be considered and imposed by the officer's or employee's supervisory chain of command, to include the County Administrator and Board of Supervisors.

- h. The Board may use Robert's Rules of Order to conduct business upon any issue or matter not expressly address by the Standing Rules.

2. Annual Review of Financial Disclosure Statements.

- a. On or before February 14<sup>th</sup> of each calendar year, the Board shall conduct an initial review of all Annual Financial Disclosure Statements (hereafter, "FDS") filed by County officers and employees who are mandatory filers under the Code for the current calendar year.
- b. On or before April 1<sup>st</sup> of each calendar year, the Board shall conduct a final review of all FDS filed for the current calendar year.
- c. The Board shall verify that each mandatory filer set forth on Appendix "A" of the Code filed a Financial Disclosure Statement.
- d. Immediately following the first annual meeting of the Board, a Failure to File Notification shall be issued by the Board, in writing, to each mandatory filer who failed to file an FDS for the current calendar year, which shall state:
  - i. That the mandatory filer was required by the Code to file an FDS for the current calendar year; and
  - ii. That the mandatory filer failed to file the FDS for the current calendar year; and
  - iii. That the failure to file an FDS for the current calendar year, within fourteen (14) calendar days after the issuance of the Failure to File Notification, would result in the mandatory personal appearance of the filer and the filer's Department Head, at the second annual Board meeting to address the individual's reasons for violating the Code.
- e. The Board may grant individual time extensions to mandatory filers, for good cause, upon the request of the individual filer or the request of the filer's Department Head.
- f. The Board shall review each FDS filed to determine if the document is facially sufficient. While it is not the duty or obligation of the Board to evaluate the veracity

of information disclosed upon an individual FDS during the annual review process, the Board may decide, in their sole discretion by majority vote, to take all reasonable actions to verify the truthfulness, completeness, and accuracy of any information disclosed upon any filed FDS, to include the lack of information provided upon any filed FDS. A filed FDS shall be deemed “facially sufficient” if it meets the following criteria:

- i. Would a reasonable person reviewing the FDS have a concern that the answers provided on the FDS are not responsive to the questions stated?
  - ii. Would a reasonable person reviewing the information disclosed on the FDS have a concern as to the veracity or accuracy of the answers provided based on common sense and/or an inherent conflict in the answers provided by the individual filer?
  - iii. Would the reasonable person reviewing the FDS have a concern that the document as a whole is not complete, or that any individual answer is not complete?
- g. The Board shall take appropriate action on each FDS which is deemed facially insufficient by a majority vote to include, but not limited to:
- i. Returning the FDS to the filer with a demand for more complete written response(s);
  - ii. Requesting the filer to submit a new FDS; Directing the filer to submit supporting documentation to address the stated concern by the Board; and/or
  - iii. Requesting the personal appearance of the individual filer before the Board to address Board member questions concerning the information contained upon the filed FDS.
- h. The Board may use the address listed by a filer on the FDS as the mailing address for all written notifications to a filer.
- i. The Board shall notify the County Administrator and the Board of Supervisors, in writing, whether all required filers under the Code filed an FDS for the current calendar year and shall disclose the names and employment position of every County officer and employee who was a mandatory filer, but failed to file the FDS for the

current calendar year, prior to the Board's second annual meeting. The written notice shall be issued by the Board on or after April 1<sup>st</sup> of each calendar year.

- j. The Board shall notify the County Administrator and the Board of Supervisors, in writing, on or after May 1<sup>st</sup> of each calendar year, the names and employment positions for any mandatory filers that filed an FDS which was determined to be facially insufficient and also failed to cure the deficiencies identified by the Board.

3. Issue Ethics Advisory Opinions.

- a. Warren County officers and employees may submit written requests for advisory opinions from the Board of Ethics with respect to proposed future conduct or action by a public servant and the interpretation of the Code and Article 18 of the General Municipal Law upon the proposed future conduct or action. The Board shall treat a request for an advisory opinion as confidential, but the requesting party understands that a written request may be subject to disclosure under the Freedom of Information Act.
- b. All requests for an Advisory Opinion shall be in writing, signed by the requester and shall be mailed or delivered in person to the Warren County Board of Ethics, c/o Warren County Attorney, Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845.
- c. Upon receipt of a written request for an advisory opinion, the Chairperson shall acknowledge the request in writing.
- d. The Board members may investigate, conduct fact-finding and background research which may include legal research, review of County policies and procedures, and conferring with the Board's counsel. The Board may by majority vote delegate such investigation to the Board's counsel.
- e. The Board shall determine whether or not it shall issue an advisory opinion.
  - i. If the request is not within the jurisdiction of the Board, or the Board decides that it will not issue an opinion based on the facts before it, then the Chairperson shall issue a letter to the requester explaining the Board's decision.

- ii. If the request is within the jurisdiction of the Board, and the Board has sufficient information, then the Board shall determine whether or not it will issue an advisory opinion in the matter presented. In determining whether or not to issue an advisory opinion, the Board may consider the following factors:
        - 1. Would an opinion assist the requester and guide future conduct?
        - 2. Has the Board previously issued an opinion on this same matter or one that is substantially similar?
        - 3. Is the matter currently being investigated by law enforcement?
        - 4. Is there a conflict of interest by the Board that requires recusal?
  - f. If the Board decides to issue an opinion, it shall issue the requested advisory opinion within ninety (90) days after the first Board meeting held after receipt of the request for an Advisory Opinion.
  - g. Every advisory opinion issued by the Board shall be in written form and a copy shall be retained by the Board and a copy sent to the requester.
  - h. A County officer or employee whose action or conduct is the subject of an advisory opinion shall not be subject to discipline or sanctions for acting, or failing to act, due to reasonable reliance on the opinion.
  - i. All advisory opinions issued by the Board are subject to the New York State Public Officers Law Article 6, known as the Freedom of Information Law. Advisory opinions may be released, redacted, or withheld from public disclosure based upon the application of the Freedom of Information Law to the facts stated in the specific opinion.
  - j. The Board may, in its sole discretion, release any Advisory Opinion, to the public.
4. Ethics Complaint Procedure.
- a. The Board is authorized to accept for consideration sworn complaints being the original signature that are in written form. An ethics complaint must be in the form of a sworn affidavit and state that the “statements made herein are true and accurate and are sworn to by the deponent and under the pains and penalties of perjury.” *See, Attachment “A.”*

- b. All sworn complaints shall be sent by mail or delivered to: Warren County Board of Ethics, c/o Warren County Attorney, Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845.
- c. The Chairman shall conduct a preliminary review of any document alleging to be a sworn ethics complaint to determine if the document constitutes a sworn complaint under the Standing Rules. If the Chairperson believes the document satisfies the Standing Rules and constitutes a sworn complaint, then the sworn complaint shall be assigned a Complaint number noting the year received (i.e. "2022") and sequentially number for that calendar year. The Chairman shall provide the Complainant written acknowledgement that the Board received and accepted the sworn complaint. If the Chairperson believes the document is not a sworn complaint, then the document shall be rejected.
- d. The Board shall not consider, review or respond to any email, text message, or other form of electronic communication, from any source, which claims to be an ethics complaint and shall not reply or respond to submissions which fail to comply with these Standing Rules.
- e. A sworn complaint filed with the Board must state the following to the extent the information is available:
  - i. Name of the person or persons who are the subject of the complaint, the Department, position, and duties and responsibilities; and
  - ii. The date, time, and location of the alleged ethics violation; and
  - iii. A detailed description of the facts of the alleged ethics violation and which facts are personally known to you, or were discovered by you from another person or source. If the facts were discovered by you from another source or person, state each and every source and person.
  - iv. The complainant's affiliation or association with the person or persons who are the subject of the ethics complaint.
  - v. Complainant's name and contact information, to include the home address, phone number, and email address.

- vi. Supporting information or documents in the possession of Complainant, which may be reviewed by the Board and used by the Board when making its determination.
- f. No member of the Board, or the County Attorney's Office shall provide any assistance or advice to a complainant in preparing a sworn complaint for submission to the Board.
- g. The Board, within sixty (60) days of receiving a sworn complaint, shall:
  - i. Make an initial determination by majority vote whether the complaint is credible and actionable. The complaint will be deemed "credible and actionable" when the complaint, as presented, sets forth reasonable cause to believe that a Warren County officer or employee violated a specific provision of the Code, or Article 18 of the General Municipal Law.
  - ii. Dismiss any complaint that is deemed not credible and actionable and notify the Complainant, in writing, of the Board's determination.
- h. Complaint Review Procedure and Investigation.
  - i. Within five (5) business days after the Board determines a complaint to be credible and actionable, the Board shall issue a Notice of Complaint to inform the Respondent(s), in writing, that an ethics complaint has been filed against him or her.
    - 1. The Notice of Complaint shall provide a general statement of facts upon which the Board relied for its determination that the complaint was credible and actionable.
    - 2. The Notice of Complaint shall set forth the provisions of law allegedly violated.
    - 3. The Board, in their sole discretion, shall determine by majority vote on a case-by-case basis whether to disclose a copy of the complaint with the Notice of Complaint. The Board may consider: the privacy of the Complainant, sensitive nature of the information set forth in the Complaint, need to protect Complainant from retribution or other negative consequences to Complainant in the workforce; relationship

of Complainant to Respondent(s); risks to investigation caused through release; and the due process rights of the Respondent to be fully informed of the pending allegation(s) in order to answer and defend themselves from the allegation(s).

4. A copy of these Standing Rules shall be provided to the Respondent with the Notice of Complaint.
- ii. The Respondent shall have twenty-one (21) days after service of the Notice of Complaint to submit a sworn affidavit in response to the allegations set forth by the complaint, along with all supporting documentation. The Respondent shall answer the Notice of Complaint by sworn affidavit made under the pains and penalties of perjury; a copy of the proposed affidavit for use by a Respondent is provided as *Attachment "B."* Service of the Notice of Complaint may occur by any one of the following:
    1. Personal delivery to Respondent at place of employment;
    2. Delivery as attachment to the Respondent's County email address; or
    3. Regular mail to the Respondent's home address of record.
  - iii. After determining a complaint is credible and actionable, the Board may investigate further and gather additional information to assist the Board to evaluate the allegation, or delegate authority to conduct further investigation to the County Attorney's Office.
    1. The Board may serve a written demand for further information or documentation from a complainant or a respondent at any time during the investigation phase and may require the production of an affidavit verifying that the additional statement and/or documents are true and complete.
    2. The Board may serve a written demand for further information or documentation to any County employee at any time during the investigation phase and may require the production of an affidavit verifying that the additional statement and/or documents are true and complete.

3. The Board may request further information or documentation from any third-party who is not a County officer or employee at any time during the investigation phase and may request production of an affidavit verifying that the additional statement and/or documents are true and complete, but any production is voluntary by the third party.

4.

i. Dismissal of Complaint Without Issuing Notice of Complaint.

i. If the Board finds that there is no reasonable cause to believe that there has been a violation, then the Board shall notify the subject of the complaint, in writing, that a complaint was received, that the Board determined no reasonable cause exists to proceed with an investigation, and that the complaint was dismissed.

ii. The Board shall notify the complainant of the determination within thirty (30) days after the complaint is dismissed.

iii. The Board shall make a separate determination whether to advise the person named as the subject of the investigation of the filed Ccomplaint, and the dismissal of the Complaint, as well as whether to provide a copy of the Complaint to the person named as the subject of the investigation.

j. Dismissal of Complaint After Issuing Notice of Complaint and Investigation.

i. If, after receiving and reviewing Respondent's affidavit in response to the Notice of Complaint the Board that there is no reasonable cause to believe that there has been a violation of the Code, then the Board shall notify the Complainant and Respondent, in writing, that the Board determined no reasonable cause exists to proceed with an investigation, and that the complaint was dismissed.

ii. The Notice of Disposition shall be issued within 30 days after a determination by the Board and no further notification of the complaint or allegations in the complaint shall be provided to any person.

k. Hearing Procedures.

- i. The Board may, in their sole discretion, determine that as a continuation of the Complaint Review Process and Investigation phase, may direct that an informal hearing be held, conduct the informal hearing, or decide to refer the matter to the appropriate agency of the Respondent is subject to any State law or to a collective bargaining agreement which provides for the conduct of disciplinary hearings.
  - ii. The Board must issue a Notice to Appear to any complainant, respondent or other County officer or employee that the Board seeks to question based on the belief that such person possesses relevant and material information relating to the subject matter of the investigation. Nothing prohibits the Board from requesting a third party who is not a County officer or employee from appearing voluntarily to answer questions posed by the Board as part of the investigation.
  - iii. The Board shall serve a Notice to Appear, at least fourteen (14) days prior to the date fixed for the informal hearing, which shall advise the witness of:
    1. The complaint number assigned by the Board;
    2. The name of the Respondent(s);
    3. The date and time for the informal hearing;
    4. The general nature of the Board's investigation;
    5. Any request to provide specific documents; and
    6. The right of any witness to appear with an attorney of their choice and at their sole cost to observe the informal hearing.
  - iv. The person appearing before an informal hearing shall not be administered any oath or affirmation and all statement shall be unsworn. No record of the proceedings shall be required, unless the Board determines, in their sole judgment, to create a record of the proceeding by recording.
1. Dismissal of Complaint After Hearing.
    - i. If, after conducting a hearing, the Board determines that it is more likely than not that no violation of the Code, or Article 18 of the General Municipal Law, occurred, then the Board shall dismiss the Complaint, with prejudice, and

notify the Chair of the Board of Supervisors, County Administrator, Director of Human Resources, the Department Head for the County officer or employee, each hearing witness, complainant and respondent, in writing, that the Board dismissed the complaint and that no further action shall be taken concerning the matter.

- ii. The Notice of Disposition shall be issued within 30 days after a determination by the Board.

m. Advisory Findings of Fact and Law.

- i. If the Board finds by majority vote that it is more likely than not that a Warren County officer or employee has violated a provision of the Code, or Article 18 of the General Municipal Law, then the Board shall prepare and approve a Report of Findings, which may contain documents received during the investigation.
- ii. The Report of Findings shall be signed by each Board Member who votes to approve the Report of Findings.
- iii. The Board shall refer the Report of Findings for the matter to the County Administrator and Department Head for the County officer or employee for further disciplinary review and appropriate action.
- iv. The Board shall refer the Report of Findings for the alleged violation involving a Department Head or any County elected official, or the County Administrator, the members of the Board of Supervisors, Clerk of the Board, the County Attorney, and Director of Human Resources.
- v. A copy of the Report of Findings shall be served upon the Respondent.

- n. All Complaints filed with the Board may be subject to the New York State Public Officers Law Article 6, known as the Freedom of Information Law. Complaints may be released, redacted, or withheld from public disclosure based upon the application of the Freedom of Information Law to the specific complaint.

o. Advisory Opinions on Enforcement.

- i. The Board shall be empowered to issue an advisory opinion on enforcement for any Findings of Fact approved by the Board which determine that it is

more likely than not that a provision of the Code, or Article 18 of the General Municipal Law, was violated by a County officer or employee.

- ii. Any advisory enforcement opinion by the Board must be included with the Findings of Fact, if issued.
  - p. Use of Findings of Fact and Advisory Opinion on Enforcement. The use and effect of any Findings of Fact and/or Advisory Opinion on Enforcement shall be made solely by the County officer's or employee's supervisory chain of command and not by the Board.
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