

BOARD OF ETHICS AGENDA

April 20, 2022 at 2:00 p.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 March 24, 2022.
- IV. Unfinished Business (if any):
 - a. Proposed 2022-23 Rules of Procedure for Board of Ethics.
- V. New Business (proposed time): None
- VI. Announcements:
 - a. Next Scheduled Meeting Date and Time.
- VII. Adjournment of Public Meeting
- VIII. Further Board proceedings Not Subject to Open Meetings Law.

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 all meetings at the Warren County Municipal Center, second floor, located at 1340 State Route 9, Lake George, New York 12845.
- b. The Board shall conduct a minimum of two meetings each calendar year with the first annual meeting occurring on or between February 1st and February 14th and the second annual meeting occurring prior to April 1st 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 on notice to the members of the Board.
- c. The organizational meeting of the Board shall be conducted between February 1st and February 14th in the first year of a Board’s two-year term of appointment. The

members of the Board shall select a Chairperson and a Vice-Chairperson during the organization meeting to serve for the remaining portion of the two-year appointment term.

- d. 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 by these Standing Rules.
- e. In the case of the absence, illness, or unavailability of the Chairperson, the Vice-Chairperson shall execute the duties of the Chairperson.
- f. The Clerk of the Board of Supervisors, or the Clerk's designee, shall serve as the Secretary for the Board, to include posting of notices of meetings, taking minutes, and publishing meeting minutes.
- g. The Board shall make all decisions as to any action by majority vote, to include the future amendment of these Standing Rules.
- h. 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 is providing advice and recommendations because the Board does not possess any authority to take final action on any matter. The Board's central 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 annual 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 initiate an investigation, but the Board may not take any final action or enforcement action against a County officer or employee. The appropriate disciplinary action, if any, may be considered and imposed by the officer's or employee's supervisory chain of command, to include the County Administrator and Board of Supervisors.
 - iv. As an advisory body, the Board may make recommendations with respect to the drafting and adoption of amendments to the Code of Ethics, upon the request of the Board of Supervisors, or pursuant to General Municipal Law § 808(2).
 - i. The Board may use Robert's Rules of Order to conduct business upon any issue or matter not expressly address by the Standing Rules.
 - j. The Board shall file a statement with the Warren County Clerk at the beginning of the Board's two-year term of appointment and not later than February 15th stating that the Board is authorized by Local Law to be the repository for all completed annual Financial Disclosure Statements and such statement shall be filed during the first year of its two-year term, not later than February 15th. The Board designates the custodian of records for all annual Financial Disclosure Statements to be the Warren County Attorney.
2. Service of Documents.
- a. Service of documents by the Board upon any individual County officer or employee required by the Standing Rules shall be accomplished by any one of the following methods:
 - i. Personal delivery to the person at their place of employment;
 - ii. Delivery as an attachment to the County email address of the intended recipient; or
 - iii. Regular mail to the home address of record on file with the County.
 - b. Proof of Service.

- i. The person completing service of any documents and papers which are served personally upon a County officer or employee at their place of employment, or by regular mail, shall be documented by completing the Proof of Service form enclosed form at **Attachment “A.”** The Proof of Service Form shall be self-authenticating and admissible for all purposes, once signed before a notary public.
- ii. The person completing service of any documents and papers which are served by County email address upon a County officer or employee shall print a copy of the sent email, or save a copy of the sent email as a .pdf document, which shall thereafter be self-authenticating and admissible for all purposes.

3. Annual Review of Annual Financial Disclosure Statements.

- a. On or before February 14th 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 1st 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 filer, as set forth on Appendix “A” of the Code, (hereafter, “mandatory filer”) filed a FDS for the current calendar year.
- d. Immediately following the first annual meeting of the Board, a Failure to File Notification, in a form similar to **Attachment “B”** herein, 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 an FDS for the current calendar year; and
 - iii. That the continuing failure to file an FDS for the current calendar year, within fourteen (14) calendar days after the issuance of the Failure to File

Notification, will 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 a filed FDS, to include the lack of information provided upon a 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 asked?
 - 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 a conflict between different answers provided by the individual filer?
 - iii. Would a 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, and shall notify the filer of the corrective action required 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;
 - iii. Directing the filer to submit supporting documentation to address the identified concern(s) of the Board; and/or

- iv. Requesting the personal appearance of the individual filer before the Board to answer Board questions concerning the information contained upon the filed FDS.
- h. The Board shall notify an individual filer of required corrective action by issuing a Notice of Corrective Action Required, in a substantially similar form as is enclosed herein at **Attachment “C.”**
 - i. The first Notice of Corrective Action Required issued by the Board shall be sent only to the individual filer of the facially insufficient FDS.
 - ii. All subsequent Notices of Corrective Action Required issued to a County officer or employee during the same calendar year to the same filer shall be sent to the filer, the filer’s department head, and the County Administrator.
 - iii. If the filer is a Department Head, the County Administrator, or an elected official of the County, then subsequent Notices of Corrective Action Required shall be sent to the filer, the Clerk of the Board of Supervisors, County Administrator, appropriate Committee Chair overseeing that Department Head, and the Chair of the Board of Supervisors.
- i. The Board shall notify the County Administrator, Clerk of the Board of Supervisors, and the Board of Supervisors, in writing, after the Board’s second annual meeting, whether all required filers under the Code filed an FDS for the current calendar year.
- j. On or after April 1st of each calendar year, the Board shall disclose to the Clerk of the Board of Supervisors, County Administrator, and the Board of Supervisors, in writing, after the Board’s second annual meeting, the names and employment position of every County officer and employee, to include elected officials, who were mandatory filers, but failed to file an FDS for the current calendar year.
- k. On or after May 1st of each calendar year, the Board shall disclose to the Clerk of the Board of Supervisors, County Administrator, and the Board of Supervisors, in writing, the names and employment positions of any mandatory filers that filed an FDS which was determined to be facially insufficient, and failed to cure the deficiencies identified by the Board.

4. Issue Ethics Advisory Opinions.

- a. Warren County officers and employees may submit to the Board written requests for advisory opinions 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. A request for an advisory opinion may be submitted upon the Request for Ethics Advisory Opinion form, enclosed herein as **Attachment “D”**, or a substantially similar document.
- b. The Board shall treat a request for an advisory opinion as confidential, but the requesting party shall understand that a written request for an advisory opinion may be subject to disclosure under the Freedom of Information Act.
- c. 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’s Office, Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845.
- d. Upon receipt of a written request for an advisory opinion, the Chairperson shall acknowledge the request in writing.
- e. 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.
- f. 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 advisory 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?
 - g. If the Board decides to issue an advisory opinion, the matter shall be assigned a case number which shall include the year followed by a sequential number (i.e. 2022-1; 2022-2).
 - h. The Board shall issue the requested opinion not later than ninety (90) days following the first Board meeting held after receipt of the request for an advisory opinion, if the Board can reach consensus on an advisory opinion within the ninety-day time period.
 - i. Every advisory opinion issued by the Board shall be in written form and retained by the Board with a copy sent to the requester.
 - j. Upon the written request of a County officer or employee that requested and received an ethics advisory opinion, the Board shall have discretion to disclose and recommend to the County that a County officer or employee whose conduct is the subject of an advisory opinion should not be subject to discipline or sanctions for acting, or failing to act, should the County determine that the County officer or employee reasonably relied upon the advisory opinion.
 - k. 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.
 - l. The Board may, in its sole discretion, release any Advisory Opinion, to the public.
5. Ethics Complaint Procedure.
 - a. The Board is authorized to accept for consideration sworn complaints bearing the original signature of the complainant that are in written form. An ethics complaint must be in the form of a sworn affidavit and which contains a signed certification which states that "False statements made herein are punishable as a class A

misdemeanor, pursuant to section 210.45 of the Penal Law” (hereafter, “sworn complaint”). See, **Attachment “E.”**

- b. All sworn complaints shall be sent by mail or personally delivered to: Warren County Board of Ethics, c/o Warren County Attorney’s Office, Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845.
- c. The Chairperson shall conduct a preliminary review of any document, not conforming to Attachment “E” herein, which alleges to be a sworn ethics complaint, and shall determine if the document constitutes a sworn complaint under these Standing Rules.
 - i. If the Chairperson determines that 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 and each sworn complaint shall be sequentially numbered during the calendar year.
 - ii. The Chairman shall provide the Complainant written acknowledgement that the Board received and accepted the sworn complaint and that the sworn complaint shall be submitted for Board consideration during the next scheduled Board meeting.
 - iii. If the Chairperson determines that the document is not a sworn complaint, then the document shall be rejected and the complainant shall be notified in writing.
- d. The Board shall not consider, review, or respond to any email, text message, facsimile, or other form of electronic communication, from any source, which claims to be an ethics complaint and shall take no action on any such submission.
- e. A sworn complaint filed with the Board must state the following to the extent such information is available:
 - i. The full legal name of the person or persons who are the subject of the complaint, and their Department, position, and duties and responsibilities with the County; 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 the complainant, or were discovered by the

complainant from another person or source. If the facts were discovered by the complainant from another source or person, state each and every source and person and provide their contact information to include home address, phone number and email address.

- iv. The complainant's affiliation, association, or relationship with the person or persons who are the subject of the ethics complaint, if any, and if none, state that there is no affiliation, association, or relationship.
 - v. Complainant's full legal name and contact information, to include the home address, work address, phone number, and email address.
 - vi. All supporting information or documents in the possession of Complainant, which may aid the Board to review and assess the allegations set forth by the complaint, shall be provided with the sworn complaint when filed.
- 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. Reasonable Cause exists when information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonable likely that a violation of the Code was committed and that such person committed it. Establishing reasonable cause will occur on a case-by-case basis.
 - 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 the Code and/or 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 following factors when determining whether to disclose the complaint: the privacy of the Complainant; the sensitive nature of the information set forth in the Complaint; the need to protect Complainant from retribution or other negative consequences to Complainant in the workforce; the relationship of Complainant to Respondent(s); the risks to the investigation caused through release of the Complaint; 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, 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 "F."**

iii. After receiving and reviewing Respondent's Answer, upon the Board making a further determination that the complaint is credible and actionable, the Board may initiate an investigation to gather additional information which may assist the Board to evaluate the allegation(s), or the Board may refer the matter to the County Attorney's Office only for the purpose of conducting further investigation and reporting the results of the investigation to the Board at a future date.

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 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.

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 complainant, in writing, 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 may make a separate determination whether to advise the person named as the subject of the investigation of the filed Complaint, 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/or Investigation.
 - i. If, after receiving and reviewing Respondent's affidavit in response to the Notice of Complaint, or after completion of an investigation, the Board determines by majority vote 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 initiate 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 that the complaint is dismissed, 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 Procedure and Investigation phase the Board shall hold an informal hearing, conduct the informal hearing, or decide to refer the matter to the appropriate agency if the Respondent's conduct is subject to any other provision of 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, as provided herein as **Exhibit “G”**, at least fourteen (14) calendar 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;
 6. The right of any witness to appear with an attorney of their choice and at their sole cost to observe the informal hearing; and
 7. That no attorney appearing with a witness shall be authorized to address the Board on behalf of their client or participate in the proceeds beyond observation.
- 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.
- v. Neither the complainant or the respondent possesses any legal right to be present during the informal hearing and questioning of a witness by the Board. The Board may determine, on a case-by-case, and witness by witness basis whether the Respondent may appear and be present for questioning of any witness during the informal hearing.
- vi. The Board shall not be required to record the informal hearing proceedings and may, in their sole discretion, record any individual witness’s statement. Should the Board decide to record the statement of any individual witness the entire statement, to include all questions and answers shall be recorded. Any such recordings shall be maintained by the Board for a period of three years from the date of any final employment action taken by the County against the Respondent, or as otherwise required by State Law.

- l. 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 set forth the facts and reasons in a written advisory decision accepted by a majority vote of the Board. The advisory decision shall be provided to 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, clearly stating 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 Decision.

- 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 by Majority vote, an Advisory Decision, which may contain as enclosures documents received by the Board during the investigation.
- ii. The Advisory Decision shall be signed by each Board Member who votes to approve the final Advisory Decision.
- iii. The Board shall refer the Advisory Decision 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 Advisory Decision for a matter involving a Department Head or any County elected official, or the County Administrator, to the members of the Board of Supervisors, Clerk of the Board, the County Attorney, and Director of Human Resources.
- v. A copy of the Advisory Decision shall be served upon the Respondent, as set forth by paragraph ___ above.

- 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 Opinion on Enforcement.
 - i. The Board shall be empowered to issue an advisory opinion on enforcement as part of any Advisory Decision approved by the Board which finds 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 may only be included with the Advisory Decision.
- p. Use of Advisory Decision and Advisory Opinion on Enforcement. The use and effect of any Advisory Decision 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.

THIS CONSTITUTES THE ENTIRE STANDING RULES OF THE BOARD.

DATED AND SIGNED THIS --- DAY OF APRIL, 2022.

ASH ANAND, Chairperson

ROBERT IUSI, Vice-Chairperson

MARTIN DESLAURIERS, Member