



Agenda

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ETHICS & CAMPAIGN REVIEW BOARD

Friday, August 12, 2011

4:00 p.m.

City Council Chambers

City Hall, 200 Lincoln Avenue

1. PROCEDURES
 - a) Roll Call
 - b) Approval of Agenda
 - c) Approval of Minutes – July 28, 2011
 - d) Election of Parliamentarian
2. ACTION ITEMS
 - a) Consideration of Previously Adopted ECRB Rules of Organization and Practice
 - b) Appoint Subcommittees
 - c) Set Process and Dates for Adjudicating Complaint Case #2011-1
3. BOARD MATTERS
4. DATE OF NEXT MEETING
5. PUBLIC COMMENT
6. ADJOURNMENT

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CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

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**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

AUGUST 12, 2011

1. PROCEDURES

a) Roll Call

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, Chair on this date at approximately 4:00 pm in the City Councilor's Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Tyler Atkins
Paul L. Biderman
Ruth Kovnat
Kristina Martinez
Roderick Thompson, Vice Chair (arrived later)

Members Absent:

Tara Lujan

Staff Present:

Tina Dominguez, Assistant City Clerk
Geno Zamora, City Attorney

Others Present:

Karl Sommer, attorney
Councilor Rebecca Wurzbarger
Karen Heldmeyer
Charmaine Clair, Stenographer

b) Approval Of The Agenda

Ms. Kovnat moved to approve the agenda as presented. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

c) Approval of The Minutes- July 28, 2011

Ms. Martinez moved to approve the minutes of July 28, 2011 as presented. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

d) Election of Parliamentarian

Ms. Kovnat moved to nominate Paul Biderman as Parliamentarian. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

2. ACTION ITEMS

a) Consideration of Previously Adopted ECRB Rules of Organization and Practice

Chair Miller opened the floor to the Board for discussion.

Mr. Tyler said he had a couple of technical changes. In his review of the rules in Section B1 it was stated the Board consisted of nine members and that has changed to seven and section B2 states a quorum is 5 members and now consists of four.

Chair Miller said if the Board took action on that item they would adopt the procedures in substance for handling the complaint. He proposed the old procedures be adopted as is for the complaint. He said the Board was tasked with developing rules and procedures and the technical and substantive changes could be considered down the road.

Mr. Biderman asked if Mr. Atkins had found other changes.

Mr. Tyler said he noted a few technical changes. He said he was under the impression the Board looked at the rules of organization for here forward. He said he would like to discuss the Hearing Subcommittee and if that was necessary or whether the entire Board should be present to resolve the complaint.

Chair Miller said that depended on whether the Board adopted the rules of organization and procedure. He suggested that be discussed by the Board.

Ms. Kovnat said her understanding was that the Board always has the discretion whether to refer something to the committee or not.

Mr. Biderman moved to adopt the previous Board's rules and procedures and to carry them forward until changed. Ms. Kovnat seconded the motion and the motion passed by unanimous voice vote.

b) Appoint Subcommittees

Chair Miller said the rules call for a Complaints Committee, an Advisory Committee and a Hearings Committee and it was up to the Board if they choose to have those committees.

Ms. Kovnat noted two members were absent and said the Board would want to share the work.

Chair Miller suggested the Board take action and absent members could be appointed to committees and if they don't agree that could be revised.

Ms. Martinez asked if the committees would be for the duration of the member's time on the Board or just for the complaint. She thought the Board should consider more debate on the substance of the rules. She said it made sense to appoint subcommittees for this complaint and see how that went; if they like the process they could revisit the substance of the rules.

Chair Miller agreed. He said the subcommittee membership had no term associated with it and when the Board decides to adopt their rules and procedures they could make changes.

Ms. Kovnat said since she is recused on this complaint and disqualified to serve on the subcommittees, she would carry her full share in the future.

Chair Miller asked Ms. Kovnat if appropriate for her to be named to a subcommittee in general. He said she could be recused and would not participate in the pending complaint. Ms. Kovnat agreed.

Chair Miller said in the past each subcommittee had three members and some members of the body were ex officio members. He suggested the membership of the Complaints Subcommittee be separate from the members of the Hearing Subcommittee with no overlap.

Mr. Biderman said he encountered an issue since the last meeting. He said he failed to consult with Judge Yalman before he joined the Board. He said she pointed out that his contract as Municipal Court alternate judge competes with the council.

Mr. Biderman said Judge Yalman asked that he not vote on ethical complaints that involve a City Councilor but wouldn't have a problem with candidates for councilor or for him to write advisory committee opinions. He said he hoped to stay on the Board but understood if that was thought to be a conflict.

Chair Miller thanked Mr. Biderman for his disclosure. He said the Board should continue to evaluate their relationships with their other activities. He said he was evaluating whether to recuse himself also because his firm represents government entities.

Chair Miller said his understanding was that a lot of the Board's work wouldn't involve issues of ... (inaudible...) He suggested that Mr. Biderman should not be on the Complaints Subcommittee on the immediate concern.

Mr. Thompson entered the meeting at this time.

Chair Miller said as the Board decides how to handle the complaint it might lead to the Hearing Subcommittee or a hearing before the entire board and in that case, recusals would have a different impact.

Chair Miller brought Mr. Thompson up to date on the discussion.

Ms. Martinez asked Ms. Kovnat for guidance. She asked, so she could understand the procedure; when was the option exercised that the Board would not hear a complaint. She said she couldn't see why the entire board wouldn't sit for every hearing, even if some members were a part of the Complaints Committee.

Ms. Kovnat said during her tenure nothing had gone to hearing. She said the complaints before the Complaints Committee were sometimes recommended to be dismissed because they didn't state a claim. She said on the

one complaint the Complaints Committee had stated a claim, the respondent waived his rights to a hearing and the Board didn't hear it.

Ms. Kovnat noted that former Chairman Rowe was in the audience. She asked if he wanted to add anything.

Fred Rowe said there was never an evidentiary hearing in the history of the Board. He said the Complaints Subcommittee and the Hearing Subcommittee had facilitated the disposition of cases without a hearing. He said that was sufficient from the standpoint of the Board as well as the complainants and the public.

Ms. Martinez said she was thinking of the Complaints Subcommittee as more of a motion to dismiss standard if there was a claim. She said it sounds as though decisions were actually made through the Complaints Subcommittee akin to a summary judgment; or she asked, were they all frivolous complaints.

Ms. Kovnat said the rules stated that a complaint must state the particular section of the code violated and allege facts in support of the claim. The Complaints Subcommittee looked to see if that standard was met and in some cases it was not. She said timeliness was another reason the subcommittee recommended dismissal of the complaint to the Board and that happened more often than not.

Mr. Thompson said he doesn't like subcommittees. He said he couldn't see why any case would need to go through a subcommittee. He thought seven Board members should be capable of making a decision without breaking into sub groups.

Ms. Kovnat said as a member of the previous Board she found the Complaints Subcommittee useful. She said three people reviewed the documents and determined whether minimum standards for a claim were satisfied. She said that was efficient and the Board could disagree with the recommendation. She said it was much easier to get three people together than seven.

Mr. Zamora reminded the Board they must comply with the Open Meetings Act once a quorum was achieved. He said subcommittees could do part of the work and must then bring the work before the entire committee and advertise for final action.

Chair Miller said that was an important point. He said one purpose of the subcommittee was to do some of the work between the Board meetings. He said the subcommittee seemed to be a mechanism to produce work that could be brought to the Board for a decision.

Mr. Biderman suggested the Board proceed with appointing a Complaints Subcommittee and an Advisory Subcommittee and hold off on the Hearing Subcommittee. He said that could be done on an ad hoc basis.

Mr. Thompson said he wouldn't press the issue and would defer to the Board.

Ms. Kovnat moved that a Complaints Subcommittee and an Advisory Subcommittee be appointed. Mr. Atkins seconded the motion. The motion passed 4-1 by a majority vote. Mr. Thompson voted against.

Mr. Adkins, Ms. Martinez and Mr. Thompson volunteered to serve on the Complaints Subcommittee.

Ms. Kovnat and Mr. Biderman volunteered to be on the Advisory Committee. Chair Miller nominated Ms. Lujan to also serve on the Advisory Committee.

Ms. Martinez moved that an ad hoc subcommittee be appointed for the purpose of reviewing the rules from a substantive perspective and that the proposed changes be brought before the Board and Mr. Atkins serve on the ad hoc committee. Mr. Thompson seconded the motion.

Mr. Atkins said he would be happy to serve on the committee.

Chair Miller suggested that the Advisory Committee take the first crack at a draft of the rules and procedures and present them to the Board by the next meeting. Ms. Martinez agreed.

Mr. Thompson suggested that the most logical way was that the ad hoc committee (Mr. Atkins) look over the rules and propose corrections to the subcommittee who would forward to the full Board.

Mr. Zamora suggested Chair Miller appoint the ad hoc committee as its own committee; adding Mr. Atkins to the Advisory Committee would create a quorum.

Ms. Kovnat and Ms. Martinez offered to help Mr. Atkins on the ad hoc committee to review the old Board procedures and provide a draft of recommendations for the Board's review at the next meeting.

c) Set Process and Dates for Adjudicating Complaint Case #2011-1

Chair Miller said he appreciated everyone's willingness to meet two weeks after they last met. He said given that a complaint is pending it behooved the Board to move expeditiously. He said he would like the Board to meet more frequently than quarterly and possibly in increments of two weeks.

Mr. Biderman asked Mr. Zamora if he contemplated that the Complaints Subcommittee might recommend to the Board on some points to proceed and on other points to reject.

Mr. Zamora said under the rules temporarily adopted by the Board, the first referral to the pending complaint would be to the Complaints Subcommittee and the parallel would be a hearing on a motion to dismiss. He said if there were multiple claims on a single complaint each would be analyzed on a claim by claim basis. The subcommittee would then return to the Board with recommendations based on each claim within a complaint.

Ms. Martinez discussed concern over meeting with the Complaints Committee within two weeks. She asked that the next meeting be set within the next month.

Chair Miller recognized a member of the public for comment.

Ms. Heldmeyer said the complaint was referred to a Complaints Subcommittee of two people and the decision was not to proceed. She said this was essentially the second time the complaint would go to a Complaints Subcommittee. She said the Complaints Subcommittee met and reached a conclusion which was never heard by the complete Board because of a lack of members who were not recused.

Chair Miller said the best course of action was for the Board to proceed starting anew.

Mr. Thompson asked if that could be a problem again with members recusing themselves from the complaint.

Chair Miller said that was possible. He said the Board should evaluate the complaint and any issues that would cause them to recuse themselves.

Mr. Thompson asked if possible for each Board member to make that evaluation and answer by the next meeting. He said he wouldn't want the Board to end up as the previous one with most of the members recused.

Chair Miller agreed and said he would put that on the agenda for the next meeting.

Mr. Zamora said the Board's packet contained the complaint and relevant responses from the parties and there would be opportunity to fully review the packet in preparation for the next meeting.

Mr. Karl Sommer asked to comment and said he represented the respondent. He said the rules temporarily adopted by the Board state "upon referral of the complaint, something would happen." He said their first action as a whole Board was to vote on that action and that raised the issue they were talking about.

Mr. Sommer said Chair Miller had indicated he might recuse himself and Mr. Biderman made it clear he would recuse himself and Ms. Kovnat had already recused herself and in his view that left an action to refer. He said that wasn't required by the rules; and was at the Board's discretion and is an action on a complaint in which if a member has a recusal, the question is raised. He said he pointed that out for the Board to consider.

Ms. Kovnat said at the last meeting the city attorney had discussed the question of whether recusals could be made for substance but not for procedural actions. She thought Mr. Sommer raised the question again and asked Mr. Zamora to brief the Board again.

Mr. Zamora said the questions raised were if a board member had recused themselves and was parliamentarian, was the member able to participate as parliamentarian. He said his advice was that participation as a parliamentarian was a *procedural* participation and not substantive.

He said the second question raised was about members of the committee participating in the referral question- which is a procedural question; if someone who had recused themselves from the substantive of the complaint and not participating in the evaluation or adjudication, could be recused from procedural votes.

Mr. Zamora said he advised the Board to be consistent; if the Parliamentarian was able to participate procedurally then members should be able to participate procedurally. He said if the parliamentarian wasn't able; members should not. He said that was more of a policy decision of the Board.

Mr. Zamora said on item 2(c) for referral to the Complaints Subcommittee- it is a procedural question not a substantive question as well as parliamentary advice related.

Mr. Sommer added he had no objections to the entire Board acting on a referral because it would go to a subcommittee that would make a recommendation. He agreed there should be consistency.

Ms. Kovnat clarified the Board's position was that recused members may act on procedural matters.

Mr. Atkins moved that the complaint be referred to the Complaints Subcommittee. Mr. Thompson seconded and the motion passed by unanimous voice vote.

3. BOARD MATTERS

There were none.

4. DATE OF NEXT MEETING

Chair Miller said timing had been discussed and that the Board should move expeditiously and Ms. Martinez raised concerns with the Board meeting within two weeks because of her schedule.

Ms. Martinez moved that the next meeting be at 4 p.m. on Thursday, September 8. Mr. Thompson seconded the motion.

Mr. Zamora reminded the Board the date of the next City Council meeting would be Tuesday, August 30 and would be followed by Fiesta and Zozobra the following week.

Ms. Martinez rescinded her motion.

The Board discussed dates for the next meeting.

Mr. Atkins moved the next meeting be held on September 1, 2011 at 4:00 p.m. Ms. Kovnat seconded the motion and the motion passed by unanimous voice vote.

5. PUBLIC COMMENT

Mr. Sommer clarified that the complaint would come back to the Board as to the sufficiency of the complaint and that that wouldn't be the place for parties to argue the merits of the recommendation.

Chair Miller said he was correct; it would not be a hearing. He said the Board would hear the recommendation from the Complaints Subcommittee and decide on further action.

Mr. Sommer confirmed the process for the broader hearing. He said the rules have a possibility for a subpoena of records, etc. by the subcommittee. He asked how the respondent would receive notice of that.

Ms. Kovnat said that would be through the city clerk but wouldn't occur at the subcommittee stage. She said the Complaints Subcommittee would just look at the pleadings.

Jim Harrington, the chair of Common Cause New Mexico, said he was present at the creation of the ECRB and had participated in the Board's proceedings and the changes in the ordinance and rules. He said he was encouraged that so many able and qualified people came forward for the Board membership.

Mr. Harrington cautioned the Board to be sparing in the use of subcommittees. He spoke about a complaint that was dismissed without a hearing and said it provoked a lot of controversy. He said a revision of the rules at that time had two important changes made: the addition to the ordinance that stated no complaint could be dismissed without public discussion by the full board. The other change made it clear that referral to a subcommittee was never automatic and must first come to the Board.

He said the Board had done a wonderful job and the current rules were satisfactory. He said he would advise that this type of Board be open. He said the trouble with subcommittees was they don't have to follow the Open Meetings Act.

Stephanie Beninato said she echoed what Mr. Harrington said about subcommittees. She said it wasn't fair when two people made a recommendation and felt the whole Board hadn't heard the matter.

She shared an experience on a complaint she had. She said she waited at least 40 minutes for the Board to have quorum and then the subcommittee read their recommendation. She said when she was able to talk she was hurried. She thought after waiting 40 minutes for the Board to get started and then to be rushed, was rude and she felt that she wasn't really heard.

Ms. Beninato strongly urged the Board to use subpoenas. She said the Board should require people to prove things they said and not just make statements.

6. ADJOURNMENT

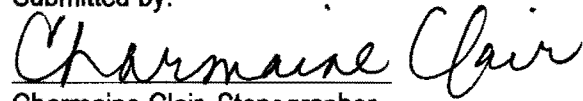
Ms. Kovnat moved to adjourn the meeting. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 5:12 p.m.

Approved by:


Justin Miller, Chair

Submitted by:


Charmaine Clair, Stenographer