



Agenda

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ETHICS & CAMPAIGN REVIEW BOARD

Monday, October 17, 2011

3:00 p.m.

City Council Chambers
City Hall, 200 Lincoln Avenue

1. PROCEDURES
 - a) Roll Call
 - b) Approval of Agenda
 - c) Approval of Minutes – September 28, 2011
2. DISCUSSION MATTERS
 - a) Report from Ad Hoc Committee on Permanent ECRB Rules of Practice and Procedure.
3. ACTION ITEMS
 - a) Consideration of Proposed Stipulation Regarding Complaint Case #2011-1.
 - a. Oral Presentation by Complainant (10 minutes)
 - b. Oral Presentation by Respondent (10 minutes)
 - c. Executive Session – Deliberation in Connection With an Adjudicatory Proceeding in Accordance with §10-15-1 (H)(3), NMSA 1978
 - d. Determination of Complainant Case #2011-1
4. BOARD MATTERS
5. DATE OF NEXT MEETING
6. PUBLIC COMMENT
7. ADJOURNMENT

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CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

October 17, 2011

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**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

OCTOBER 17, 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 3:00 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
Roderick Thompson, Vice Chair
Tyler Atkins
Paul L. Biderman
Ruth Kovnat
Tara Lujan
Kristina Martinez

Members Absent:

Staff Present:

Yolanda Vigil, City Clerk
Geno Zamora, City Attorney

Others Present:

Karl Sommer, Sommer, Karnes & Associates, LLP
Councilor Rebecca Wurzbarger
Karen Heldmeyer
Jim Harrington, Common Cause New Mexico
Charmaine Clair, Stenographer

b) Approval of the Agenda

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

c) Approval of the Minutes- September 28, 2011

Mr. Atkins moved to approve the minutes of September 28, 2011 as presented. Mr. Thompson seconded the motion and it passed by unanimous voice vote.

2. ACTION ITEMS

a) Consideration of Proposed Stipulation/Complaint #2011-1

Chair Miller said the Board had been working on developing permanent rules for their practice and procedures and had adopted the previous Board's rules. He asked the subcommittee to present a quick report on the status.

Mr. Atkins said he had a short memorandum to flush out the procedures; more specifically the current rules. He said they were getting a more concrete procedure for complaints.

Chair Miller asked if there was anything in particular Mr. Atkins wanted to discuss.

Mr. Atkins said the most important part is between the adjudicatory powers of this Board and shifting the investigative part more to the city attorney so the Board could be presented with the evidence. He said he found other cities do that to have a more independent investigation.

Ms. Kovnat noted that this was in addition to the current procedures and not a substitution and is more detail to the hearing procedures.

Chair Miller said he understood that Mr. Tyler's recommendations were to fill the void in the previous procedure in regard to hearings and the ideas would be incorporated into a more comprehensive evaluation of the old procedures. He said it would be nice to have a draft redline at some point, to the rules of the old procedures.

Chair Miller recapped the agenda items. He explained that a Waiver of Hearing and Stipulation was received from the Respondent at the last meeting. He said the Board decided to entertain written submissions from the Complainant and Respondent and both submitted those October 11 and the Board considered them.

He said at the last meeting the Board decided to hear oral presentations from the Complainant and Respondent and would then decide how to proceed. He said agenda Item C is a placeholder should the Board choose to go into Executive Session.

Chair Miller said the determination of Complaint Case #2001 is a possible action item but the Board doesn't need to take action today and may decide if they need more time, to evaluate and deliberate what they hear. Also the Board might decide not to take action.

1. Oral Presentation by Complainant

Ms. Karen Heldmeyer said the Board has read what she submitted. She said this particular aspect of the code is no longer in the new code and she wished it were. She said the useful place it served was to let people know what their elected officials were doing; especially trips. She said there is enough exception that if a trip is a gift and not x, y, and z, it is supposed to be reported under the new code. She said but if x, y, and z was a trip for

business it doesn't have to be. She said the Mayor said at the last meeting that a trip taken for City Council *is* a trip for business.

She said she has suggested a few things for the Board to consider as they look the Stipulation from Councilor Wurzbarger about what she did or didn't do.

Ms. Heldmeyer commended Chair Miller for pointing out that it wasn't necessary for the Board to go into Executive Session; it is not required. She pointed out the predecessor Board did not go into Executive Session and made use of subcommittees and held deliberations in public. She said since this is a new Board, they should think about being as open and transparent as possible.

2. Oral Presentation by Respondent (10 minutes)

Mr. Karl Sommer said the Board has the submission from him and Councilor Wurzbarger. He said he would discuss the purpose behind the hearing, the specifics of the Stipulation and the policies related to the code being applied. He said he would conclude by recommending this as a reasonable determination if the Board chooses and it would uphold the integrity of the code as well as the city government and bring the matter to conclusion.

He said the code is in place in a broad sense, to protect the integrity of the city government. The specifics of the disclosure requirement protect that interest by disclosing the possible influences a city official may be under or connections that might influence them in the form of gifts or trips or required disclosures. He said that also serves to disclose conflicts where a person might gain from their personal action and could prevent the use of the public process for personal gain.

Mr. Sommer said in this instance they dealt with two issues that came up in the process; one a failure to disclose a trip to Abu Dhabi and the other to Japan. He said the trips have since been disclosed. He said the proposed Stipulation deals with it by admission that they were not disclose.

He said when looking at the substance of those disclosures you must ask yourself how the integrity of the system was protected by the disclosure; did it disclose anything hidden or an influence that might otherwise corrupt the system. He said he would submit to the Board that categorically the disclosures by Councilor Wurzbarger, over her many years of service show the opposite- that the trip to Japan and to Abu Dhabi reveals no conflicts of interest; no unseemly relationships upon which an influence might have been exerted in her public service.

Mr. Sommer said he had summarized these disclosures in the submission and not all were trips but were of the same type. He said it revealed a public service by a person who is committed to our city, UNESCO, the World Creative Cities Forum, Green Practices Conference, the Buckman Diversion Project and the Municipal League. He said the list of disclosures show someone committed to this city and her constituents and also shows someone free of conflicts and interests throughout her term. He said these two failures to disclose were violations of the code and is what the proposed Stipulation states.

Mr. Sommer said when summed up, the redeeming thing about the record is the record of public service and integrity. He said they proposed the Stipulation because it was a method by which the Board could resolve a matter of this type without a public hearing and the ongoing process related to that.

Mr. Sommer asked if the integrity of the system has been upheld and said it has. He asked if disclosures failed to be made inadvertently and said they were. He said they believed this a reasonable termination of this long and unfortunate process and asked on behalf of Councilor Wurzbarger that the Board take this into consideration and find it an acceptable and reasonable determination and that the policies of the code have been looked after by the Board.

Chair Miller said the Board has heard the presentations from the Complainant and Respondent and have the written material. He said it was up to the Board to deliberate and decide if they were ready to take action.

He reminded those present that he and Ms. Kovnat and Mr. Biderman were recused from participating substantively and would not contribute to the substantive deliberations or vote.

3. Executive Session – Deliberation with an Adjudicatory Proceeding in Accordance with §10-15-1 (H) (3), NMSA 1978

Chair Miller asked if the Board felt they should go into Executive Session.

Mr. Thompson said he doesn't see the Executive Session as necessary; Ms. Martinez and Mr. Atkins agreed.

4. Determination of Complainant Case #2011-1

Chair Miller said the deliberation would continue in public.

Ms. Martinez said to begin she would turn their attention to the proposed Stipulation of the Complainant. She said the Rules of Organization and Practice require a voluntary Stipulation be approved by the Board at a public meeting. She thought they should approve the proposed Stipulation with changes. She suggested the following:

- Paragraph 2, following the word Abu Dhabi strike *the* and the rest of the language up to *which* and the next three words so the paragraph reads: "The Respondent did not disclose her trip to Abu Dhabi, which contravene the requirements of the code."
- Paragraph 3, strike "due to her inadvertence" and add language so the paragraph read: *the Respondent did not report the trip to Kobe and Japan, which contravene the requirements of the code.*
- Paragraph 5; remove the word *technical* to read "a violation occurred."
- Paragraph 8, second page, change the word *admonished* and say "the Board should publicly reprimand the Respondent."

Ms. Martinez said with those changes she thought the Stipulation could be approved and accepted by the Board. She said the matter was clear cut that there were violations and the Stipulation should be without excuses.

Ms. Martinez was asked to reiterate her changes. She reviewed them again with the Board.

Mr. Thompson said he was in complete agreement; the additions made the language cleaner and less ambiguous. He said anything the Board put out to the public should be crystal clear.

Mr. Atkins said the changes were reasonable. He said the most important thing to him was that Councilor Wurzbarger recognized that these were violations of the code and took responsibility.

Ms. Lujan asked how the Board would go forward with a public reprimand; would it be in writing.

Ms. Martinez said she would ask City Attorney Zamora how that was usually done.

Mr. Zamora said that several options could be pursued. The first was a separate document being a public reprimand, much like the Board had with the stipulated agreement. The Board would need to amend a couple of things within the agreement and change it from the *proposed* Stipulation to a Stipulation. Paragraph eight language could state that by way of this Stipulation it constituted a formal, public reprimand. He said this document could be used or this could be in a separate document.

Mr. Biderman said he thought the Board might have to go to a hearing.

Mr. Atkins said he would prefer to keep the document as a Stipulation but would ask Mr. Sommer and Councilor Wurzbarger if the changes were agreeable.

Mr. Sommer said the changes were acceptable as a Stipulation as read into the record by Board member Martinez.

Mr. Atkins suggested changing paragraph 8 as recommended by Mr. Zamora, to make the Stipulation the public reprimand.

Mr. Zamora suggested language for paragraph eight and read "The Board hereby publically reprimands the Respondent for the non-reporting in this manner..." He said or the language could be clarified by adding "with this Stipulation the Board hereby reprimands..."

Ms. Martinez said she preferred the first option. Mr. Thompson agreed. Mr. Atkins said the first option sounded as though it was coming directly from the Board and this Stipulation is from Mr. Sommer.

Mr. Thompson said if the party stipulates to the Board's modification then it becomes their Stipulation. He said if that was not an issue he would propose that the first proposal be incorporated.

Mr. Sommer said the modifications were acceptable either way and they accept the language and understand that the reprimand would be on the record and part of the agreement and not just the Stipulation of the Board.

Chair Miller said the Board has proposed language from Ms. Martinez and language in paragraph eight suggested by Mr. Zamora. He asked if Mr. Zamora also proposed changing "*proposed Stipulation*" to Stipulation.

Mr. Zamora said yes, the word *proposed* should come out. He also suggested at the end after "*respectfully submitted*" and Mr. Sommer's signature line, to have a signature block signed by the chair of the ECRB.

Mr. Atkins said the third line "proposes a voluntary Stipulation" could be changed "to hereby stipulates to resolve" and the last sentence of the introductory paragraph be "Respondent stipulates that a settlement be entered that recites the following..."

Ms. Martinez agreed. She said the changes were necessary to make clear this is not a proposal and that the Respondent agreed.

Mr. Thompson moved to accept and adopt the Stipulations submitted by Councilor Wurzburger and her attorney Karl Sommer.

Chair Miller asked that the changes to be made to the Stipulation be cited into the record for clarity and to ensure that Councilor Wurzburger agreed.

The changes to the Stipulation were read into record as follows:

1. The title of the Stipulation was changed from "Proposed Stipulation" to *Stipulation Disposing of Complaint*.
2. Paragraph number two, sentence one, *the* would be struck as superfluous. The phrase would now read: "The Respondent did not disclose her trip to Abu Dhabi which contravenes the requirements of the code."
3. Paragraph 3- The Respondent did not report the trip to Kobe or Kanasaw Japan which contravene the requirements of the code.
4. Paragraph 5- the word *technical* would be struck; the remainder would stay the same.
5. Paragraph 8- would read "The Board shall hereby publically reprimand the Respondent for the non-reporting in this matter.
6. After the numbered paragraphs "The Respondent respectfully requests that the remaining complaint relating to non-reporting of trips be handled pursuant to the Stipulations submitted above; the words "*for code*" would be struck."

Mr. Thompson clarified if the Board agreed to keep the line where Mr. Sommer "respectfully submits" the Stipulation.

Mr. Atkins replied they would keep it.

Ms. Martinez suggested something be added such as "Approved by the Board on such and such..."

Mr. Thompson suggested a line that said Accepted, with a space for Mr. Miller's name and title as chair of the ECRB.

Mr. Atkins said he wasn't sure the chair should sign the Stipulation.

Mr. Zamora said it would be up to Chair Miller and the Board members. It would be a procedural action and not substantive and the chair wouldn't be authorized to sign without the vote of the Board; or the Board could designate someone else.

Mr. Biderman recommended that someone else be designated; Mr. Atkins suggested the vice chair. Mr. Thompson said as vice chair he would be happy to do that.

Mr. Zamora added an addition to the new accepted language could be "by vote taken on...with the date provided." He said also changes to the introductory paragraph should be read in as part of the motion.

Mr. Thompson continued with the changes to the Stipulation in the introductory paragraph.

7. Introductory paragraph, line 3 should read: "Pursuant to rule E of ECRB Rules of Organization and Practice, Rebecca Wurzbarger, otherwise known as the Respondent, bind through her attorneys Sommer, Karnes and Associates LP, hereby stipulate to resolve the remaining complaint relating to the non-reporting of two trips abroad pending in the captioned case. More specifically Respondent stipulates that a settlement be entered that recites the following..." and it would then go into the numbers.

Mr. Biderman said the last paragraph where "Respondent respectfully requests"...was superfluous to the sentence and shouldn't be the language of *request*. He said procedurally the Board was clear that the other matters had been dismissed.

The other Board members agreed.

Chair Miller asked for final confirmation from Mr. Sommer.

Mr. Sommer said the Stipulation does reflect his and Councilor Wurzbarger's understanding of the Stipulation.

Mr. Atkins seconded the motion.

VOTE: the vote was a roll call vote that reflected the following:

For: Tyler Atkins, Tara Lujan, Kristina Martinez and Roderick Thompson

Against: None

Members Recused: Paul Biderman, Justin Miller and Ruth Kovnat

The motion was approved to accept and adopt the Stipulations submitted by Councilor Wurzbarger and her attorney Karl Sommer with the changes as read into the record.

Chair Miller said the document would be prepared by the city and submitted to Mr. Thompson for signature.

Mr. Zamora asked that Mr. Sommer submit the original digital document and the city would prepare the final document and present to Vice Chair Thompson for signature.

3. BOARD MATTERS

There were none.

4. DATE OF NEXT MEETING

Chair Miller said there wasn't anything pending other than the development of permanent rules.

Ms. Kovnat said the Board might ask the city clerk if she had a timetable with respect to the upcoming elections.

Ms. Vigil said the next deadline would be candidates turning in petitions on November 10; a submittal of qualifying contributions for the report November 22 and financial reporting requirements in January. She thought there would be no complaints or violations until January.

Mr. Biderman asked if there was a need to set a date on the procedural rules.

Chair Miller said the sooner the better. He asked if there was a deadline that Mr. Atkins thought the subcommittee could send a draft proposal out.

Mr. Atkins said he thought it was up to the Board; a month or two should be plenty of time.

Chair Miller suggested by the first of December the ad hoc committee distribute a draft to the Board and the Board could decide how close they were to the next meeting and if they were ready to discuss the draft procedures.

Mr. Biderman said it was just if any nominating petitions were challenged. He asked if the Board would have that coming before them.

Ms. Vigil said that would not come to the ECRB; a challenge would go to District Court. She added that she failed to mention December 6 candidates would file for candidacy and between then and January the Board would want to meet. She said in the past the Board met with the candidates that would be on the ballot to go over the rules and regulations. The candidates wouldn't be known until after December 6 when the nominating petitions and declarations of candidacy were filed.

Chair Miller said the Board would keep that in mind and would not set a definite time now. He asked Ms. Vigil to let him know if something came up in the interim.

6. PUBLIC COMMENT

Jim Harrington, Common Cause New Mexico, said he would speak on the Rules of Organization and Practice. He asked if the rules drafted on December first could be circulated and made public and on the website or available in the (city) clerk's office. He said if that couldn't be done could the Board adopt a procedure for the public to look at and/or comment on the rules.

Mr. Thompson said if Mr. Harrington had ideas about making things public that came from or related to the Board, the Board would be more than open to looking at that. He said it would be productive and easier to consider something if in writing from Common Cause or Mr. Harrington as a citizen.

Mr. Harrington said he would give that thought. He said he would discuss with Ms. Vigil the practicality of getting items on the web or made public.

Mr. Biderman noted that for efficiency as well, to post and allow for public comment could shorten the time for adopting.

Chair Miller asked that anyone interested such as Mr. Harrington to let a Board member know their ideas to improve the procedures and the ideas would be welcome.

Mr. Zamora said if people wish to send public comments he would suggest they be sent to either the City Clerk or Chair Miller so there wasn't an issue to avoid a rolling quorum violation of the Open Meetings Act.

Chair Miller agreed.

5. ADJOURNMENT

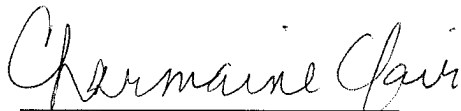
Mr. Atkins moved to adjourn the meeting. Mr. Thompson seconded the motion and it passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 3:57 p.m.

Approved by:

Justin Miller, Chair

Submitted by:



Charmaine Clair, Stenographer