



City of Madison

City of Madison
Madison, WI 53703
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Meeting Minutes - Draft ETHICS BOARD

Thursday, June 2, 2011

4:45 PM

210 Martin Luther King, Jr. Blvd. Room 103A
Room 103A (City-County Building)

CALL TO ORDER / ROLL CALL

Present: 6 -

Michael E. Verveer; Carol A. Weidel; David Albino; Laura D. Rose;
Michael B. Jacob and Drew Cochrane

Absent: 1 -

Eric D. Hands

Also present: Steven Brist, Michael May, Rick Petri, Devin Pickell, Lara Mainella, Lana Mades and Brenda Konkel.

1. APPROVAL OF MINUTES

Ms. Rose stated that a correction needed to be made to the Minutes. She stated that under Disclosures and Recusals, the first sentence should state that she made a disclosure of her acquaintance with Janet Piraino, not Ms. Weidel. Ms. Rose moved that the minutes be approved as corrected, Mr. Cochrane seconded the motion. The motion passed on a voice vote.

2. PUBLIC COMMENT

Brenda Konkel spoke regarding the previous decision in Item 8, ID #21358. She stated that he had filed the complaint in that matter because she wanted to make the issue of disclosure more important. She said she was concerned that the Board had based its decision on mitigating factors and that it was stated that the alleged violation was a technical violation. Ms. Konkel stated that the terms "mitigating factors" and "technical violation" were not found in the Ethics Code. She said that she was concerned that the decision would cause disclosure to be taken less seriously by council and committee members. She stated that she did not know another way to make disclosure to be taken more seriously, except perhaps through education. In response to a question, she stated that when she was a council member, she remembered the ethics code being discussed during the briefing for new members. Ald. Verveer showed Ms. Konkel a copy of the draft decision, which was not adopted by the Board. Ms. Konkel had not seen the document and could not comment upon it. Mr. Brist stated that Item 8 was back on the agenda in order for him to inform the Board that he had learned that past practice had been to prepare decisions only when a violation had been found.

3. DISCLOSURES AND RECUSALS

Assistant City Attorney Brist stated that he was a member of the Madison City Attorneys Association and that he would be personally affected by Item #10. He stated that he had no discussions with Assistant City Attorney Michael May or with other Assistant City Attorneys regarding the substance of the proposal. He stated that he had discussions regarding the proposal with the sponsor, Ald. Skidmore. He stated that he would not take part in the discussion on Item #10. In response to a question, Brist stated that he had received union emails on the subject of Item #10 but had not taken part in any meetings where the substance of Item #10 was discussed.

HEARINGS

4. 22255 Ethics Board Complaint: Davin Pickell v. Tom Carto

Attachments: DAVIN PICKELL V. TOM CARTO.pdf

The Chair called the complaint of Pickell v. Carto, a single count in which Davin Pickell complained that the Respondent Tom Carto had violated Sec. 3.35(5)(c) MGO, by engaging in outside employment at 201 State, Inc. The matter was before the Ethics Board to determine jurisdiction. Mr. Pickell spoke first and stated that the Board had jurisdiction because Mr. Carto was a City employee and under the Ethics Code. Attorney Rick Petri appeared on behalf of Mr. Carto. Mr. Petri noted that he had previously filed a motion to dismiss the complaint. Mr. Petri argued that the complaint should be dismissed on the grounds of lack of subject matter jurisdiction and because Mr. Pickell did not join this complaint with his prior complaint filed on the same subject matter in November. Mr. Petri called to the attention of the Board prior filings he made on behalf of the Respondent containing Mr. Carto's employment contract.

Mr. Cochrane asked Mr. Petri about the timing of the complaint and whether the complaint should have been brought within 12 months of the Respondent's employment with 201 State. Mr. Petri replied that yes, the 12 months should apply. Mr. Cochrane asked what facts would need to be in a complaint to make it valid. Mr. Petri said that he would not speculate. Mr. Cochrane then asked why the complaint was not specific enough. Mr. Petri stated that the complaint did not state what constituted a conflict in the employment and that Mr. Pickell had an obligation to state the conflict in the complaint. Mr. Petri further stated that he did not feel that Mr. Pickell's complaint made sense.

Mr. Pickell then spoke in rebuttal and said that at some point Mr. Carto's relationship with 201 State and the Overture Center changed and he said that at that point the employment became a conflict. When asked if that point was more than 12 months before he filed his complaint, Mr. Pickell stated that he did not become aware of the issue until the negotiations started between the parties in September and October 2010. In response to

a question, Mr. Pickell stated that the outside employment itself was a conflict and the Respondent should have recused himself. Mr. Petri stated that the ordinance requires a review of the contract and other documents that define the relationship, because the official duties of Mr. Carto are defined in those documents. Mr. Petri stated that it was necessary that the stakeholders be involved in the Overture negotiations and that the process was sanctioned by the Mayor and the Council to meet the deadline in the forbearance agreement. Mr. Petri stated that Mr. Carto began his employment with 201 State in January 2007 and that at that time no one anticipated the type of negotiations that were necessary in 2010.

Ms. Rose wondered if it was now appropriate to vote in jurisdiction, but that she needed more information on what was alleged in order to make a decision on substance. She did not feel that the dual role in and of itself was a violation without specific facts alleging specific violations. Mr. Jacob asked if additional information could be gathered and whether the Board procedures governed such an attempt to gather additional information. Mr. Cochrane expressed concern that the dual employment itself occurred in 2007.

Ms. Rose moved that the Board find jurisdiction, Mr. Cochrane seconded the motion. The Board further discussed jurisdiction in regard to the job itself in 2007 or whether additional information was needed. Mr. Jacob felt that the time frame and the specifics of a violation needed to be stated in order to proceed. Mr. Petri said that he could not proceed unless he knows what act occurred that was a violation so that he could prepare a case.

Ms. Rose asked unanimous consent to withdraw her motion; there was no objection to her request.

Ms. Rose then moved to dismiss the complaint without prejudice and allow the Complainant to refile the complaint with specific information of the dates incidents took place and more description of the actions of what were the incidents that constituted a violation. Ms. Weidel seconded the motion. The motion passed on a voice vote.

5. 22258

Ethics Board Complaint: Davin Pickell v. David Cieslewicz

Attachments: DAVIN PICKELL V. DAVID CIESLEWICZ.CARTO.pdf

The Chair called the complaint, a single count in which Davin Pickell alleged that David Cieslewicz violated Sec. 3.35(4) of the ethics code, relating to responsibility in public office. Assistant Attorney Brist then raised several questions about the jurisdiction of the Board. He asked if Board no longer had jurisdiction because Mr. Cieslewicz was no longer an incumbent under the definition in Sec. 3.35 (3). He noted that in the past, a resignation from office had ended ethics complaint proceedings, and that under Sub (13), voluntary resignation was promoted and that the remedy for an elected official, under (13)(a) was sanctioning, censuring or expelling an elected official. He also asked whether 3.35(4) was a proper section under which to

allege the violation, as it was a broad statement of policy.

The Chair asked Mr. Pickell to respond. He stated that if leaving office meant that the Board no longer had jurisdiction, a elected official could violate the ethics code during their last month in office without punishment.

Ms. Weidel stated that the complaint seemed moot to her. In response to a question, Mr. Brist stated that a person who was in the end of their term would still be subject to criminal penalties, and that Sec. 3.35(13)(e), MGO which provided for prosecution in Municipal Court by the City Attorney, with a forfeiture of up to \$500, might also apply. There was considerable discussion regarding whether the ethics applied to elected officials who had left office. Mr. Albino moved to dismiss the complaint for lack of jurisdiction, Ms. Rose seconded the motion. Ald. Verveer asked how the post employment restrictions contained in Sec. 3.35(5)(i) would be enforced. Attorney Brist stated that a prosecution for a forfeiture under (13)(e) could be brought by the City Attorney's office. The Chair stated that he thought that there was a value to holding hearings regardless of sanctions, because such discussion could offer guidance to incumbents. Ald. Verveer and other members of the Board asked Assistant Attorney Brist to draft language regarding the Board's jurisdiction over those who have left office. The Chair stated that he felt that the challenge of filing a complaint under Sec. 3.35(4) was a significant issue. Following further discussion, Ald. Verveer pointed out that the same 12 month issue existed in this complaint as existed in the prior complaint. Ald. Verveer stated that for this reason he would be more comfortable with a motion similar to the one made in the prior complaint.

Ms. Rose asked if the pending motion would dismiss the complaint with or without prejudice. Assistant City Attorney Brist stated that he interpreted the current motion to be to dismiss with prejudice. The chair called for a vote. The motion failed. Ms. Rose moved to dismiss the complaint without prejudice with an opportunity to refile a complaint that stated actual dates and times alleged acts occurred. Ald. Verveer seconded the motion. The motion passed.

6. 22273

Board of Ethics Complaint: Davin Pickell v. Diedre Garton

Attachments: DAVIN PICKELL V. DIEDRE GARTON.pdf

The Chair then called Davin Pickell v. Deirdre Garton, a complaint containing three counts, alleging violations of Sec. 3.35(5)(a)3a, relating to Limitations on Actions; 3.35(5)(f)2, relating to Disclosure and Disqualification; and 3.35(5)(h)1, relating to Representing Private Interests. Mr. Brist noted that the Complainant, Mr. Pickell, had left the hearing and that under the Board's rules, his other pending complaints could be dismissed without prejudice since he was not present. The Board decided to proceed with item 6. The complainant was not present. Ms. Rose temporarily took the chair while Mr. Jacob left the room. Ms. Rose called the complaint and noted that Attorney Petri was present on behalf of Ms. Garton. Ald. Verveer asked Attorney Petri his position on the complaint. Attorney Petri noted that the Complainant had admitted the first count but he

was seeking dismissal on the second and third counts. Mr. Petri then stated that for the record he would object to the first count because the Complainant was not present. The Chair stated that the first count, relating to Sec. 3.35(5)(a)3a, would be considered first. Mr. Jacob returned and took the chair. Ms. Rose moved that the Board find jurisdiction in the first count and set the matter for a full hearing. Verveer seconded the motion. The motion passed.

The Board then considered the second count related to Sec. 3.35(5)(f)(2). Ms. Rose stated that she would expect a complaint to have specific information related to the facts of the alleged violation, such as minutes of the meeting where the violation occurred. Ms. Rose moved to dismiss without prejudice, and permitting the Complainant to refile with more specific information of the violations and Ms. Weidel seconded the motion. The chair called for a voice vote, but the Chair was in doubt on the outcome. The Chair asked for a show of hands and the motion failed by 2-3.

The Chair sought another motion and Mr. Cochrane moved to find jurisdiction and the motion was seconded by Alder Verveer. The motion passed 5-0 on a hand vote.

The Board then considered the third count, related to Sec. 3.35(5)(h)1. Attorney Petri argued that the Complaint did not specify which sentence in Sec. 3.35(5)(h)1 was violated. Mr. Petri also again raised the issue that Mr. Pickell was not present. Mr. Cochrane moved that the Board find it had jurisdiction, and Ms. Rose seconded the motion. The motion passed on a voice vote.

7. 22274

Board of Ethics Complaint: Davin Pickell v. David Cieslewicz

Attachments: [DAVIN PICKELL V. DAVID CIESLEWICZ.GARTON.pdf](#)

The Chair called Item #7, Pickell v. Cieslewicz, which consisted of four separate counts, each of which alleged a violation of Sec. 3.35(4) Responsibility of Public Office. Assistant City Attorney Brist said that he found the three complaints confusing because all three were based on Sec. 3.35(4) and because the narrative of the three counts were very similar. The Chair stated that while the three narratives were very similar they were each slightly different. The Chair stated that the Board had previously dismissed a complaint filed against Ms. Piraino partly because it was based on Sec. 3.35(4). Here it appeared the allegation of Mr. Pickell was that the Mayor failed to check the Ethics Statement of Ms. Garton. The Board discussed what would be the appropriate motion and the Chair stated that the motion could be to dismiss for lack of jurisdiction, because the complaint was brought under Sub (4), as had been done in the Piraino matter. Ms. Rose stated that it was hard to tell what the Complainant mean about Sub (4) in the allegations, particularly because the Complainant was absent. Ms. Rose moved to dismiss all four counts, for lack of jurisdiction. Mr. Albino seconded the motion. The motion passed on a voice vote.

The Board members discussed setting a hearing date. Ms. Rose suggested

using Doodle to set a hearing date.

OLD BUSINESS

8. 21358 Ethics Board Complaint: Brenda Konkel v. Lisa Subeck

Attachments: Brenda Konkel v Lisa Subeck

Attorney Brist stated that he had placed this item on the agenda so that he could inform the Committee that he had learned from City Attorney May that it had been the past practice to prepare written decisions only in cases where violations were found. No further action was taken.

NEW BUSINESS

9. 21490 Amending Sec. 3.35(9) of the Madison General Ordinances to require certain city employees to file a Statement of Interest.
- Assistant City Attorney Brist told the Board members that Item 9 was related to changing the Ethics Code so that those who enforced federal laws and regulations would be treated the same under the Ethics Code reporting requirements as those who enforce state and local laws and regulations. He stated that the subject had been previously discussed by the Board. Ms. Rose moved that the Board recommend adoption of Item 9, Ald. Verveer seconded the motion. The motion passed. Mr. Albino was absent at the time of the vote and did not vote.
10. 21410 Creating new Sec. 3.35(9)(b)7. and renumbering current Sec. 3.35(9)(b)7. to Sec. 3.35(9)(b)8. of the Madison General Ordinances to not require Assistant City Attorneys, Hearing Examiners and the Madison Municipal Judge to file Statements of Interests.
- Ald. Verveer moved that Item 10 be taken up out of order because the sponsor and others were present to discuss the item. There was no objection to immediately taking up item 10.

Four persons registered in favor of the proposal and not wishing to speak. They were: Anne Zellhoefer, Carolyn Hogg, Marci Paulsen and Jennifer Zilavy. There were four registrants to speak on the matter. The first speaker was Ald. Paul Skidmore, the sponsor of the proposal. Ald. Skidmore stated that the ordinance change was related to public safety and that it made sense to exclude city attorneys from filing the ethics disclosure forms for the same public safety reasons as police officers were excluded from filing the disclosures. He stated that he had contacted the Municipal Judge, the District Attorney and the former District Attorney as part of his efforts to research the matter and that those parties all favored the concept of the proposal. He stated that Assistant District Attorneys were excluded from similar reporting requirements. He stated that those to be exempted by his proposal could be very vulnerable under certain situations. In response to a question, he stated that he had learned that most Assistant County

Corporation Counsel were exempt, but not those at higher levels. The Chair asked if others would be exempted in the future and Ald. Skidmore replied that he had discussed whether to exclude from Parks and Building Inspection but he did not intend to propose other exclusions.

City Attorney Michael May spoke against the proposal and distributed a memorandum. He stated that he understood the proposal was developed because an assistant city attorney was the subject of a stalking incident and that he was concerned about the safety of his employees. However, he felt it was wrong to treat attorneys differently than other city employees. He pointed out that a recent change in state law (Sec. 19.36(10) Wis. Stats.) prohibited the City from releasing employee's home address, home telephone number, home email address or Social Security number without the employee's authorization. He stated that he hoped that a substitute could be developed along those lines that would affect all city employees. He noted that an error had been made earlier in the year when employee ethics forms were placed online by the clerk's office, but that the clerk's staff was now familiar with the state law requirement. In response to a question from Ald. Verveer, City Attorney May stated that some ACAs had filed statement of interest forms and had not been the subject of harassment by the public.

Lana Mades spoke in favor of the proposal. She stated that she was now an Assistant City Attorney but had previously been an Assistant District Attorney for 12 years. She said that she had prosecuted major felonies as an Assistant District Attorney, but it was not until she became a city prosecutor that she was the victim of a felony stalking case. She stated that he had gone to great lengths to protect the privacy of her personal information.

Lara Mainella spoke in favor of the proposal, representing herself and the Madison City Attorneys Association. She said that all attorneys were members of the State Bar and the State Bar published ethics opinions for the guidance of attorneys. Ms. Mainella stated that Assistant City Attorneys were covered by the Rules of Professional Conduct for Attorneys and that those rules were broader than the City ethics code. She stated that she could lose her law license if she violated the Code of Professional Conduct, which was a more significant penalty than provided under the ethics code. She stated that she had removed her personal information from the records of the Assessor's office. She said that the ethics disclosure forms were regularly subject of news reports. She said that it was very distressing when the disclosure forms were put online with personal information and that she was concerned that forms might not be properly redacted in the future. She felt that being required to disclose personal information created a potential safety issue for assistant city attorneys. She also stated that disclosure of real estate other than the personal residence presented a safety concern and the cleanest way to deal with the issue was to adopt the exception in the proposed ordinance..

The Board then discussed the proposal. After discussion Ald. Verveer proposed that a substitute be prepared that would exclude personal

identifying information for city employees from the form, and that he would consider supporting a substitute that had a method to exclude the mention of side businesses that are operated in a home and a method of protecting other non employee incumbents who are victims of domestic violence. Ald. Verveer moved to refer the proposal to the next regular meeting and that a substitute be prepared along the lines he had outlined. Ms. Rose seconded the motion. The motion passed on a voice vote.

22986 City Attorney Michael May distributed the attached memo at the Ethics Board Meeting June 2, 2011.

Attachments: [MPM.Memo.Ethics Board.6-2-11.pdf](#)

11. 21740 Amending Sec. 3.35(5)(b) of the Madison General Ordinances to clarify the cross-referenced meaning of the term "political activity."
Assistant City Attorney Brist stated that the proposal defined political activity for the purposes of the privilege and advantage section of the Ethics Code. Ald. Verveer pointed out that he introduced the proposal at the request of City Attorney Michael May, to clarify that City employees participation in demonstrations at the Capitol would not constitute political activity. Ald. Verveer moved to recommend adoption, Ms Rose seconded the motion. The motion passed on a voice vote.

12. 21476 Amending the Ethics Board Rules of Procedure.

Attachments: [POLICY MANUAL,REDLINE,PDF.2-8-11.pdf](#)

Assistant Attorney Brist stated that Item 12 related to the previously approved changes to the Ethic Board Policy Manual. He stated that Ald. Verveer had introduced the resolution seeking council approval of the changes and that the Council had referred the resolution back to the Board. Ms. Weidel moved to recommend adoption, Mr. Albino seconded the motion. The motion passed on a voice vote.

Prior to adjournment the members asked that the issue of non incumbency related to Sec. 3.35 (3), as well as the Board's role in prosecutions in Municipal Court be placed on the next regular meeting agenda. Mr. Albino, in relation to Agenda Item 2, stated that he wondered if he should have disclosed that Mr. Pickell had filed an ethics complaint against him and some other Board members, and that he had decided disclosure was not necessary. Attorney Brist stated that Mr. Pickell was present at that portion of the meeting and had an opportunity to object. Ms. Rose cautioned that the members not discuss the substance of the matter.

ADJOURNMENT

Ald. Verveer moved adjournment, Ms Rose seconded the motion. The

meeting was adjourned at 8:16 PM.

