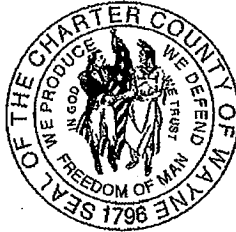


# Wayne County Ethics Board

William J. Giovan, Chair  
William O'Neil, Vice-Chair  
Sidney Bogan  
Anthony S. Guerriero  
Daniel Martin  
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December 14, 2012

Hon. Robert A. Ficano, Wayne County Executive  
Hon. Cathy M. Garrett, Wayne County Clerk  
Hon. Benny N. Napoleon, Wayne County Sheriff  
Hon. Raymond J. Wojtowicz, Wayne County Treasurer  
Hon. Gary Woronchak, Wayne County Commission Chair  
Hon. Kym L. Worthy, Wayne County Prosecutor  
Hon. Bernard J. Youngblood, Wayne County Register of Deeds

## **Re: Year-End Report of the Wayne County Ethics Board**

Dear Elected Officials:

The recently-enacted Wayne County Ethics Ordinance, No. 2012-209, directs the Wayne County Ethics Board to submit a written report of its activities to the appointing elected officials by December 15 of each year.

Because the ordinance became effective in the latter part of the year, the Board met only twice in 2012, on August 20 and October 22.

At the October 20 meeting the Board elected William J. Giovan as Chair and William O'Neill as Vice-Chair. The Board discussed the prospect of holding annual elections for those positions.

Several suggested amendments to the Ethics Ordinance were preliminarily discussed at the August meeting, and the same were voted on in final form at the October 22 meeting, and they were forwarded to Mr. Woronchak, Commission Chair, on October 27. The suggested amendments and the rationale for each are enclosed as Attachment 1.

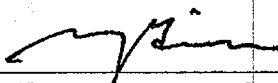
The Ethics Ordinance charges the Board with adopting rules of procedure. At the October 22 meeting the Board adopted, with several modifications, rules that had been

recommended by Board member Anthony S. Guerriero.. The same are enclosed as Attachment 2, entitled "Ethics Complaint Process."

In addition, with the able assistance of staff, the Board has approved a form for the submission of complaints under the ordinance. It is enclosed as Attachment 3.

The Board stands ready to perform whatever substantive obligations that may be assigned to it under the Ethics Ordinance.

For the Ethics Board,



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William J. Giovan, Chair

WJG/wjg

## Attachment 1

### Amendments to Wayne County Ethics Ordinance Recommended by the Ethics Board

#### Section 7 c

(c) Organization. The PRESIDING OFFICER OF THE seven-member ethics Board shall be governed by the chairperson, who shall be elected by majority vote of ethics board members.

**Comment:** This amendment more accurately defines the authority of the chairperson.

#### Proposed Second Paragraph to Section 7.1 (f) - Support

The County of Wayne shall defend the members of the ethics board and indemnify them against any claims or causes of action that may be asserted against them arising from their actions or duties under this ordinance.

**Comment:** Although it may be implicit already, the members of the ethics board should not be exposed to personal liability or the cost of defense on account of actions taken pursuant to their obligations under the ordinance. This proposed added paragraph makes explicit that the County will provided a defense and indemnification against claims that may arise pursuant to their duties.

#### Section 7.1 (g)

(g) Removal. UPON RECOMMENDATION BY THE CHAIR OF THE WAYNE COUNTY COMMISSION, Any member of the board may be removed by the appropriate elected official AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS OF THE COMMISSION for good cause, including but not limited to incompetence, substantial neglect of duty, gross misconduct, malfeasance in office, conflict of interest, or violation of any law, after written notice, stating the grounds for removal.

**Comment:** The existing provision allows for removal of a member of the board by the sole action of one person, i. e. the official who appointed that member. This circumstance can be seen as affecting the independence of the member, and most assuredly so in any instance where the conduct of the appointing official may be concerned. The proposed amendment allows for removal of a member, but under a more stringent standard, and by a more neutral authority, the Wayne County Commission. A resolution to remove a member would be initiated, if at all, by the Commission Chair.

### Section 7.5: Hearings

(a) ~~No later than sixty (60) calendar days after receiving the complaint,~~ The Ethics Board shall convene a hearing on the complaint AS SOON AS IS PRACTICABLE.

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(f) ~~Within ninety (90) days after receiving the complaint,~~ The ethics board shall render its decision, by majority vote of the members appointed.

**Comment:** It seems futile to be able to accurately predict a limitation on the time within which a board can convene a hearing. For example, Section 7.3(i), naturally enough, provides that the board may request additional information. It can't be predicted how long it will take to receive the information or to investigate it, not to mention other factors, such as a delay in filing an answer to the complaint.

Similarly, the timing of the decision cannot rationally be governed by the original date of filing of the complaint. Not even after the conclusion of the hearing can there be any accurate prediction of how long it will take a seven-member board to reach a decision. Surely it must be assumed that the Board is obliged to make a decision as soon as is possible under the circumstances.

These subsections, after all, relate to procedure, a matter which is assigned to the Ethics Board in any event under section 7.1(c) of the ordinance, and properly so.

### Section 10 (d)

(d) In addition to any other penalty, whether criminal or civil, a public servant who violates this ordinance may be subject to disciplinary action, including censure, reprimand, removal, dismissal or discharge BY THE EMPLOYER OF THE PUBLIC SERVANT.

**Comment:** This amendment clarifies that the cited discipline refers to the official employing the public servant, and not to the Ethics Board.

## Attachment 2

### **WAYNE COUNTY BOARD OF ETHICS COMPLAINT PROCESS**

#### **Complaint Process.**

(a) *Filing of complaint.* Any person may file a written, sworn and signed complaint with the Board of Ethics alleging a violation by any officer, employee or contractor of the County of this division. The complaint shall only be on the form provided by the County. If the alleged violation concerns the Board of Ethics attorney, then special counsel shall perform the steps required of the Board of Ethics attorney under this division. Each complaint shall be based on personal knowledge and shall fully state the facts of the violation.

(b) *Notification of complainant and alleged violation.* Within ten business days after receiving the complaint, the Board of Ethics attorney shall notify the complainant that the complaint has been received and indicate the review process. Within the same time period, the Board of Ethics attorney shall forward a copy of the complaint and a description of the review process to the alleged violator.

(c) *Request for information.* The Board of Ethics may request information from the alleged violator concerning the complaint.

(d) *Initial review.* The Board of Ethics attorney shall, within 14 days, review the complaint and all supporting documents submitted by the complainant and by the alleged violator and shall determine:

(1) Whether or not the complaint is in the proper form;

(2) Whether the complaint falls under the scope and authority of the Board.

(e) *Decision by review committee.* If the complaint meets the requirements of the subsections (d) of this section, the Board of Ethics attorney, the chairperson and the vice-chairperson of the Board of Ethics shall constitute a review committee and shall review the complaint and all information submitted to determine whether the complaint alleges a prima facie violation of the Ethics Ordinance. In the absence of either the chairperson or vice-chairperson, the individual with the most seniority on the Board of Ethics shall sit on the review committee. Upon review, the review committee shall, by a majority vote, do one of the following:

(1) Dismiss the complaint if on its face it does not allege a prima facie violation of the Ethics ordinance.

(2) Approve the complaint without a recommendation;

- (3) Approve the complaint with a recommendation; or
- (4) Refer the complaint to another agency for investigation.

Both the complainant and the alleged violator shall be notified in writing by the Board of Ethics attorney of the decision at this step.

(f) *Decision by Board of Ethics.* Upon receipt and review of an approved complaint, the full Board of Ethics shall decide upon a course of action.

(g) *Notice of hearing.* If the Board of Ethics orders a hearing, the date for the hearing shall not be more than 30 days from the date it received the recommendation of the Board of Ethics attorney. Notice of the hearing shall be given to the officer or employee involved, the immediate supervisor, the County elected officials, the County Commissioners and the Board of Ethics attorney by personal service or certified mail, return receipt requested. Notice shall be given not less than 20 days prior to the hearing.

(h) *Recommendation by Board of Ethics.* The Board of Ethics shall issue an advisory report and recommendation within 30 days of the conclusion of the hearing.

(i) *Conduct of hearing.* The hearing shall be conducted informally. Witnesses shall be sworn by the presiding officer of the Board of Ethics or other official authorized to administer oaths. The alleged violator shall have the right to counsel and the right to present evidence and witnesses and to cross examine witnesses. The state rules of evidence and civil procedure shall not apply. Insofar as practical, hearings shall follow the administrative procedures act of 1969, Public Act No. 306 of 1969 (MCL 24.201 et. Seq.). A written or electronic record shall be kept of the proceedings. The Board of Ethics shall have subpoena power to obtain information and compel witnesses to appear for hearings when necessary.

(j) The time limit specified herein may be extended or shortened by the Chairman or Vice-Chairman of the Board.

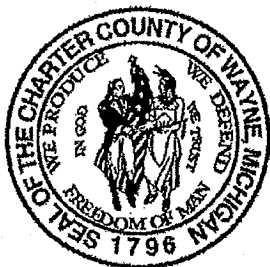
#### **Advisory opinions.**

(a) Requests for advisory opinions shall be filed with the Board of Ethics attorney and state the request in detail. The request shall be in writing and signed. The Board of Ethics attorney shall examine and request and, if in proper form and within the purview of the Board, forward the request to the Board of Ethics for an opinion. The Board of Ethics attorney shall advise the Board of Ethics in writing of any request not forwarded and the reason for the denial.

(b) The Board of Ethics may make such informal investigation of the facts and issues raised by the request as the Board deems advisable. The Board shall render its opinion within 30 days of receiving the request. The Board of Ethics may reject a request for advisory opinion if the Board, in good faith, believes the request to be in bad faith, for improper purposes, frivolous, of only minor consequence, or has been effectively ruled on or settled by past actions of the Board of Ethics, a County ordinance, or other law.

(c) If the County officer, employee or contractor is the subject of an advisory opinion and has received a copy of the opinion, his actions shall be prima facie legal and ethical if he conforms to the opinion. This section shall not apply to a criminal act.

(d) Advisory opinions may not be used for any purpose not specifically authorized by this ordinance. Opinions of the Board shall not be binding but shall be advisory only.



## Wayne County Ethics Board Complaint Form

The Guardian Building • 500 Griswold, Suite 861 • Detroit, MI 48226  
Phone: 313-224-0909 • Fax: 313-224-7484 • [wcethics@co.wayne.mi.us](mailto:wcethics@co.wayne.mi.us)

Wayne County Ethics Board Members  
William J. Giovan, Chair • William O'Neil, Vice-Chair  
Sidney Bogan • Anthony S. Guerriero • Daniel Martin • William C. Schaefer • Stella Szczesny

***Under Wayne County Enrolled Ordinance No. 2012-209, any employee or citizen is encouraged to report any instances of unethical behavior by a Wayne County employee or elected officials to the Wayne County Ethics Board for further investigation.***

Complainant information (Please Print):

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Public servant involved in alleged ethics violation:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Complainants statement of fact or circumstance specifying that at least one standard of prohibited conduct has occurred. Please type information in box below, have this form notarized and return original by U.S. mail to the Wayne County Ethics Board at the address listed at the top of the page.***

Acknowledged by \_\_\_\_\_ before me on the \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

Notary public, State of Michigan, County of \_\_\_\_\_

My commission expires \_\_\_\_\_

Acting in the County of \_\_\_\_\_