

AD HOC COMMITTEE ON EMPLOYEE AND OFFICIAL CONDUCT & ETHICS
MEETING MINUTES
DECEMBER 15, 2020

The Ad Hoc Committee on Employee and Official Conduct & Ethics of the Broome County Legislature met remotely via Zoom Videoconferencing on Tuesday, December 15, 2020.

Members Present: S. Flagg (Chair), K. Myers, C. O'Brien, S. Ryan, Legislature; K. McManus, County Exec's Office, R. Behnke, Law; T. Behan, Personnel

Members Absent: None

Others Present: D. Reynolds, C. Hall M. Tanzini, R. O'Donnell, Legislature; B. Norris, Security

The remote Ad Hoc Committee on Employee and Official Conduct & Ethics meeting was called to order by the Chair at 4:06 PM. A motion was made by Mrs. Myers to open the meeting for discussion, seconded by Mrs. O'Brien.

Mr. Flagg stated that this would be the last Ad Hoc Committee meeting and that they would wrap up its work by approving the final Committee Report. Prior to approving the report, Mr. Flagg requested that the Committee review the recommendations one more time.

The Committee reviewed the draft acknowledgement statement for all of Broome County's Code of Ethics and codes of conduct. This would be completed by all County employees, at the time of hire and when changes are made to the policies.

The Committee then reviewed the draft Local Law, which proposes changes to the County's Code of Ethics. The recommended changes include the following:

1. Further detailing what "nominal value" is in regards to the gift policy, which will be set at \$15.00 or less;
2. Acknowledgement in writing that county personnel have received and reviewed the Code of Ethics at the time of employment and within 30 days of when changes are made to the Code;
3. Includes a Duty to Report provision, where if a County employee knows that the Code of Ethics has been violated that they are required to report that;
4. And further details when an employee or official should recuse or abstain due to financial conflicts or material benefit to themselves, family member, or related organization.

The Committee reviewed the draft Workplace Bullying Policy and agreed to modify the policy to encompass any form of communication at any time while an individual is employed by Broome County. This would encompass cyber-bullying and bullying by County officials and employees outside of normal business hours.

Mr. O'Donnell, on behalf of Mr. Reynolds, presented to the Committee an additional annual acknowledgment statement regarding outside employment. The statement would require that County officials and employees participating in outside employment, as referenced in the County Charter and Code and Administrative Rules, annually obtain the proper approvals for said outside employment. The Committee expressed its support for this acknowledgment and agreed to include it in the final report.

Mr. Flagg read a copy of his letter to Legislature Chairman Dan Reynolds, which would accompany the report thanking him for establishing the Committee and providing their findings to the Chairman, all Legislators, the County Executive, and the Clerk of the Legislature.

Mrs. Ryan made a motion, seconded by Mrs. O'Brien to approve the final Committee Report with the four recommendations included (see attached).

Motion Carried. Ayes-7, Nays-0.

Mr. Flagg thanked all the Committee members for the time and efforts in completing the charge of the Committee. Mr. Reynolds expressed his gratitude to Mr. Flagg for his dedication as the Chair of the Committee and to the other Committee members. Mrs. O'Brien thanked Mr. Behnke for preparing several of the documents for the Committee to review and consider.

There being no further business to come before the Ad Hoc Committee at this time, a motion to adjourn was made by Mrs. O'Brien and seconded by Mr. Behnke. The meeting adjourned at 5:02 PM.



Office of the Broome County Legislature

Stephen J. Flagg
Broome County Legislator, 1st District
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December 15, 2020

Hon. Daniel J. Reynolds, Chairman
Broome County Legislature
P.O. Box 1766
Binghamton, NY 13902

Dear Chairman Reynolds,

Earlier this year you authorized the creation of the Ad Hoc Committee on Employee and Official Conduct and Ethics. Though the current COVID-19 pandemic presented some additional challenges for us in conducting our work, the Committee has met six times this year to review the policies of Broome County as it relates to the conduct and ethics of our officials and employees.

I want to thank our committee members for their diligent work. During our meetings, members have provided valuable input and guidance on our ethics code and employee policies. After reviewing the County's current policies and procedures, and completing our gap analysis, we have found several areas we believe should be addressed by both the County Legislature and the County Administration.

Attached to this letter you will find our recommendations for your consideration. Thank you again for allowing us this opportunity and please feel free to contact me, or any other members of the committee, if you have any questions on our findings.

Sincerely,

Stephen J. Flagg, Chairman
Ad Hoc Committee on Employee and Official Conduct and Ethics
Broome County Legislator, 1st District

cc:

County Executive Jason T. Garnar
Broome County Legislators
Clerk of the Legislature Aaron M. Martin

Recommendations of the Broome County Ad Hoc Committee
on Employee and Official Conduct and Ethics

1. Broome County should issue a new Acknowledgment and Certification of Compliance with the Code of Conduct for all current employees, new employees at the time of hire, and whenever changes are made to the Code of Conduct. Attachment #1 is our recommendation for said acknowledgment.

2. Broome County should amend its Code of Ethics within the Charter and Code to:
 - Further define what “nominal value” is for gifts and/or services,
 - Require acknowledgment of all County officers and employees that they have received and reviewed the Code of Ethics, and require the same any time changes are made to the Code,
 - Include a “Duty to Report” provision that anyone who knows of a violation of the Code of Ethics to be required to report it to the Board of Ethics without retaliation, and
 - Better outline and define the “Record of Abstention” for all officials and employees.

Attachment #2 is our recommendation for a Local Law amending the Charter and Code to achieve the above.

3. In the absence of a Workplace Bullying Policy, we recommend that the County adopt a new standalone policy to protect all of its employees from bullying in County Government. Attachment #3 is our recommendation for said policy.

4. Broome County should issue a new Annual Acknowledgment and Certification of Compliance regarding outside employment. Attachment #4 is our recommendation for said acknowledgment.

Acknowledgment and Certification of Compliance with the Code of Conduct

This is to acknowledge that I have received and reviewed the County of Broome Ethics Policy and Code of Conduct. I agree to comply with the standards referenced in the Code and all related policies and procedures. I acknowledge that the Code is a statement of principles for individual conduct and that it is my responsibility to understand and follow all policies and standards and to adhere to the ethical principles outlined in the Code of Conduct.

These policies and code together form the basis of our commitment to ethical behavior and compliance with legal requirements. Because we cannot include or anticipate every legal or ethical issue that may arise, I understand that all employees must comply with all applicable laws, regulations, policies, and ethical practices whether or not they are specifically addressed in the Code. It is a duty to report any potential violation of which I become aware promptly to my supervisor. I understand that the County of Broome maintains a policy of non-retaliation provided that the report is made in good faith. I understand that any violation of the Code of Conduct or any ethics or compliance policy or procedure is grounds for disciplinary action, up to and including termination from employment.

LOCAL LAW INTRO
NO. OF 20__

A LOCAL LAW AMENDING CHAPTER 53
OF THE BROOME COUNTY CHARTER AND CODE

BE IT ENACTED, by the County Legislature of the County of Broome as follows:

Section 1. Section 53-2 of the County Charter and Code is hereby amended to read as follows:

§ 53-2 Definitions.

As used in this article, the following terms shall have the meanings indicated:

BROOME COUNTY GOVERNMENT OFFICER OR EMPLOYEE - An officer or employee of the County of Broome, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No individual shall be deemed to be a Broome County Government officer or employee solely by reason of being a volunteer fireman or civil defense volunteer.

GENERAL MUNICIPAL LAW - The General Municipal Law of the State of New York.

GIFT - Anything of more than nominal value given to an officer or employee in any form, including, but not limited to, money, service, loan, travel, lodging, meals, tickets, refreshments, entertainment, discount, forbearance, or promise, having a monetary value.

IMMEDIATE FAMILY MEMBER- Spouse, child, parent, sibling, grandparent, grandchild (including step and in-law relationships), legal guardian of or any other relative or individual residing in the same household as a Broome County Government officer and employee.

INTEREST - A pecuniary or material benefit accruing to a Broome County Government officer or employee or to a Broome County Government officer's or employee's spouse, minor children and dependents; or a firm, partnership or association of which such officer or employee is a member or employee; or a corporation of which such officer or employee is an officer or director; or a corporation, any stock of which is accrued or controlled, directly or indirectly, by such officer or employee.

NOMINAL VALUE - Nominal value means an item of minimal or insignificant value given as a routine social amenity which could not be reasonably interpreted or construed as attempting to influence a Broome County Government officer or employee. An item or service with a fair market value of fifteen dollars or less shall generally be considered as having a nominal value.

Section 2. Section 53-7 of the Code of Ethics shall be amended to read as follows:

§ 53-7 Distribution of Code of Ethics.

- A. The County Executive of the County of Broome shall cause a copy of this Code of Ethics to be distributed to every Broome County Government officer and employee by the Personnel Department within 30 days after the effective date of this article. Each Broome County Government officer and employee thereafter shall be furnished a copy by the Personnel Department, before entering upon the duties of his or her office or employment.
- B. Every County officer and employee shall acknowledge in writing that he or she has received and reviewed a copy of the Code of Ethics before entering upon the duties of his or her office. If the Code of Ethics is amended, every County officer and employee shall acknowledge in writing that he or she has received and reviewed a copy of the Code of Ethics within thirty days of receipt of a copy of the amendment.

Section 3. Chapter 53 of the Charter and Code shall be amended by a new Section 53-7.1 to read as follows:

§ 53-7.1 Duty to Report.

Every County officer or employee shall have an affirmative duty to report promptly to the District Attorney and the County Attorney any action which may reasonably be interpreted as an improper attempt to influence them in the conduct of their office. Every County officer or employee shall have an affirmative duty to report promptly to the Board of Ethics any action which the officer or employee reasonably interprets to be a violation of this Code of Ethics.

County officers and employees shall be protected against reprisal for the lawful disclosure of information which the officer or employee reasonably believes to be a violation of this Code of Ethics.

Section 4. Chapter 53 of the Charter and Code is amended to add a new Section as follows:

§ 53-32 Record of Abstention.

A. Recusal. No County Officer or Employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter, acting on the matter, or failing to act on the matter, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, or on an immediate Family Member or Related Private Organization.

B. Abstention. Whenever a County officer or employee is required to recuse himself or herself pursuant to Section A of this Section he or she shall:

- (1) Immediately refrain from participating further in the matter and at no time have any communication, formal or informal, concerning the subject with any fellow officer or employee of the County;
- (2) Promptly inform his or her superior, if any, and the County Executive.

C. Action Following Recusal and Abstention. In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:

- (1) If the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or
- (2) If the power or duty is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function; or
- (3) If the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power of duty.

D. Prohibition Inapplicable; Disclosure, Recusal and Abstention Not Required.

The provisions of Sections A and B of this Section shall not prohibit, or require, recusal or transactional disclosure as a result of:

- (1) An action specifically authorized by statute, rule, or regulation of the State of New York or of the United States;
- (2) The requirements relating to recusal and abstention shall not apply with respect to the following matters:
 - a) Adoption of the municipality's annual budget;

- b) Any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:
 - i. All municipal officers or employees;
 - ii. All residents or taxpayers of the municipality or an area of the municipality; or
 - iii. The general public; or
 - iv. Any ministerial act or other action that does not require the exercise of discretion.

(3) Recusal and abstention shall not be required with respect to any matter:

- a) Which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by Sections A and B of this Section.
- b) Which comes before a municipal officer when the officer would be prohibited from acting by Sections A and B of this Section and the matter cannot be lawfully delegated to another person.

Section 5. This Local Law shall take effect upon filing with the Secretary of State.

matters underlined added
matters [bracketed] deleted

WORKPLACE BULLYING

Broome County Government does not stand for bullying in the workplace.

Victims of bullying suffer very real and serious harm as a result of these incidents, often showing signs of depression, anxiety, social isolation, nervousness, low self-esteem, declining work performance, hyper-vigilance, nightmares, changed eating and sleeping habits, and fear for their safety.

Broome County Government is committed to ensuring the physical, social and mental wellbeing of all of its employees.

For the purpose of this section, bullying within Broome County Government - shall mean:

Any form of verbal or electronic communication or written correspondence, with the malicious and willful intent to coerce, extort, abuse, torment, threaten, terrify or intimidate a specific other person, that serves no legitimate purpose, and causes such other person to suffer:

- a. Actual and reasonable fear of physical harm to himself or herself;
- b. Actual and reasonable fear of damage to the property of such person; or
- c. A substantially detrimental effect on his or her physical, mental or emotional health.

Correspondence may be directly to or regarding an individual and shall include any form of communication. This policy applies to any form of communication at any time while an individual is employed by Broome County.

If any Broome County Government employee believes that they have been bullied, or has witnessed bullying occur, they should first consult his or her supervisor, notify Broome County Security as warranted, the Personnel Officer and the County Attorney by completing and submitting a Broome County General Incident Report form, or another communication with the same information contained within the General Incident Report form.

The Personnel Officer will review the matter in consultation with the County Attorney to ensure that all local, state and federal polices, rules, regulations and laws are followed accordingly. If the Personnel Officer or County Attorney are the subject of the Complaint they shall not participate in the investigation of the Complaint. If the Personnel Officer receives a Complaint against the County Executive or the Chair of the Legislature, the Personnel Officer and County Attorney, to ensure a fair investigation, shall retain an independent investigator not affiliated with County government to conduct the investigation.

Annual Acknowledgment and Certification of Compliance with Outside Employment

BROOME COUNTY ADMINISTRATIVE RULES ARTICLE 19 - EMPLOYEES ENGAGING IN OTHER TRANSACTIONS AND DUTIES

1. All employees covered by these rules shall be governed by the Broome County Charter in all matters of other transactions, duties and employment.
2. Heads of Administrative Units and other management and supervisory personnel, employed on a full-time basis, are prohibited from reimbursable work outside their regular County employment without the annual written consent of the County Executive or the Chairman of the County Legislature, whichever is appropriate. Such written consent shall specify the nature and extent of outside work which the County Executive or the Chairman of the County Legislature permits. Such annual written consents shall be filed with the Clerk of the County Legislature prior to the time that the affected employee commences outside employment.

BROOME COUNTY CHARTER AND CODE §C2610. Officers and employees engaging in other duties.

No officer or employee of the County shall accept employment or engage in any business or professional activity with any other governmental unit, including an elective office, unless prior written consent is given by a three-man board, consisting of the County Executive, the Chairman of the County Legislature and the Personnel Officer. Such consent must be filed with the Clerk of the County Legislature. Prior to granting a consent, the board must make a finding that the requested employment or engagement in business or professional activity does not conflict with the officer's or employee's duties to the County of Broome.

This is to acknowledge that I have received and reviewed the Administrative Rules and Section C2610 of the Broome County Charter and Code. I agree to comply with the provisions of these policies as it relates to reporting outside employment and obtaining the proper approvals required. I acknowledge that it is my responsibility to understand and follow all policies and standards and to adhere to the principles outlined in them.

It is a duty to report any potential violation of which I become aware promptly to my supervisor. I understand that the County of Broome maintains a policy of non-retaliation provided that the report is made in good faith. I understand that any violation of these policies is grounds for disciplinary action, up to and including termination from employment.

If I have any confusion on these policies, I am required to consult with the County Attorney and/or the Personnel Officer for any clarification. With that being said, I know that requesting clarification does not absolve me with complying with the aforementioned requirements regarding outside employment.