

OFFICE OF THE NASSAU COUNTY COMPTROLLER



Limited Review of Hiring Practices and Related Parties

Nepotism – Part I

Nassau County Board of Ethics

APRIL 10, 2019

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OFFICE OF THE NASSAU COUNTY COMPTROLLER
LIMITED REVIEW OF HIRING PRACTICES & RELATED PARTIES
NEPOTISM – PART I
NASSAU COUNTY BOARD OF ETHICS

WHAT IS NEPOTISM & WHY PERFORM AN AUDIT

Nepotism is the practice among those with power or influence of favoring relatives or friends, especially by providing jobs. This practice has a negative impact on governmental operations, and can deprive County residents and taxpayers of a well-qualified workforce.

In 2018, the Office of the Nassau County Comptroller launched the first ever audit on Nepotism in Nassau County, after a series of corruption allegations arose, culminating in the indictments and convictions of officials related to Nassau County government, and reports surfaced of numerous “friends and families” of political figures working in taxpayer funded jobs.

The intent of this multi-part audit is to identify the processes, policies and practices embedded within the County which allowed favoritism in hiring and staffing to flourish in the past, and to recommend specific reforms to end political abuses in the hiring process.

Undertaking an audit of Nepotism guided by the auditing standards of the Government Accountability Office (GAO) provides both County policymakers and residents with an objective and independent review of this important issue.

**NO OFFICER OR
EMPLOYEE OF THE
COUNTY SHALL HIRE
OR INDUCE OTHERS TO
HIRE A RELATIVE...**

*§2218(7) - Nassau County
Code of Ethics*

**WHY WE STARTED A REPORT ON NEPOTISM WITH A
REVIEW OF THE NASSAU COUNTY BOARD OF ETHICS**

A strong code of ethics which helps employees prevent ethical missteps is the cornerstone of meaningful reform.

The primary laws governing Nepotism in Nassau County are the Nassau County Administrative Code §22-4.3 concerning Financial Disclosure, and the County Charter’s Code of Ethics, which states in §2218(7):

Hiring and supervision of relatives. No officer or employee of the County shall hire or induce others to hire a relative of such officer or employee nor shall any officer or employee of the County directly supervise or evaluate the work of any relative employed by the County except:

- a) as required by the Civil Service Law or rules promulgated thereunder;
- b) pursuant to a supervisory arrangement that began prior to the effective date of this subdivision; or
- c) **with the written approval of the Board of Ethics.**

The Board is required to make anti-nepotism decisions in an open and transparent manner, completely and separately apart from an officer’s or employee’s ability to seek advisory opinions or the Board’s authority to issue advisory opinions. The starting point for an audit of nepotism practices in Nassau County is therefore logically the Board of Ethics, as it is charged with administering and enforcing the Code of Ethics and the financial disclosure requirements.

WHAT STEPS ARE NEXT?

This Nepotism audit will be conducted in multiple parts. Two additional sections are currently underway, which are reviewing Nassau County’s hiring processes, and evaluating internal controls regarding conflicts of interests and anti-nepotism policies. The agencies being audited are the Nassau County Office of Human Resources (HR) and the Nassau County Civil Service Commission. The audit process also involves a number of County departments.

In addition to anti-nepotism polices, Auditors are looking at HR policies and procedures currently in place, what policies are lacking or outdated, and internal policies individual departments have implemented.



OFFICE OF THE NASSAU COUNTY COMPTROLLER
LIMITED REVIEW OF HIRING PRACTICES & RELATED PARTIES
NEPOTISM – PART I, NASSAU COUNTY BOARD OF ETHICS REPORT SUMMARY

WHY WE DID THIS REPORT

A strong code of ethics which helps employees prevent ethical missteps is the cornerstone of meaningful reform.

An audit of the Nassau County Board of Ethics was undertaken as the first part of a broad audit of Nepotism in Nassau County government. The Board of Ethics is the logical starting point for a Nepotism audit as it is charged with administering and enforcing the Code of Ethics and its financial disclosure requirement, which is the primary law governing Nepotism in Nassau County.

WHAT WE FOUND

We found that during the majority of the audit period, the prior Board of Ethics was not meeting its major mission of education in order to prevent ethical missteps and took limited actions to enforce the Code of Ethics, despite a broad mandate to do so.

Limited Use of Its Authority to Enforce the Code of Ethics:

- No investigations were conducted and no enforcement actions were undertaken for violations of the County's Code of Ethics for the audit period, the same time at which corruption allegations and arrests related to Nassau County's contracting process were taking place.
- Financial disclosure statements, a key tool in preventing nepotism in County government, were not fully reviewed by the Board, rather they were "sampled" by the Counsel to the Board. Over 700 individuals were required to file financial disclosure statements for 2017, not all have been received, yet no penalties have been assessed.
- Policies and procedures including instructions on how employees may file a complaint were not available.
- Guidance pertaining to related employees (nepotism) for employees and officials was not readily available.
- The Board failed to broadly address nepotism or potential nepotism even after being asked for specific nepotism advice, when nepotism was self-reported or was the subject of a complaint.
- The Board previously had operated with less than the required five members, operated in violation of the Code by exceeding the number of county employees who may serve, and had members who were political party officials. The Board has also lacked diversity in gender and occupational background.

Failure to Educate:

- The Code of Ethics was not promoted by the prior Board. The Code was not posted in County buildings and little was done to remind employees and officers of the ethical laws and guidelines they must abide by.
- The Board of Ethics website was inadequate and did not meet the Code of Ethics's requirements to have a website containing guidance documents, instructional and educational resources and forms necessary to seek advisory opinions, or file an ethics complaint. Based on an analysis by Auditors of other Boards of Ethics websites, Nassau County's website was the second worst of all reviewed.
- Advisory opinions, which provide guidance to public servants seeking to avoid ethical missteps, were hidden from the public and auditors. Other boards of ethics typically post redacted advisory opinions to educate and offer answers to questions employees may have.
- Annual reports were not issued as required by the Code as amended by the Legislature in 2017. These reports provide details on the actions taken by the Board during the year, available training, resource documents and what advice or education the Board would like to convey to the public. A useful and effective annual report is an important tool for transparent operations.
- A general lack of transparency regarding Board of Ethics meetings was found, including failure to follow the Open Meetings Law. The NY State Public Officer's Law requires public business be performed in an open and public manner so that the performance of public officials may be observed. Board of Ethics meetings were not well publicized, were not easily accessible, meeting agendas were not provided, minutes were not approved and Executive Sessions were not convened in accordance with the Open Meetings Law.

We also found that the longtime Counsel to the Board has various other contracts with Nassau County, and represents over 14 other boards of ethics and municipalities in Nassau County, which creates potential conflicts of interest.



OFFICE OF THE NASSAU COUNTY COMPTROLLER
LIMITED REVIEW OF HIRING PRACTICES & RELATED PARTIES
NEPOTISM – PART I, NASSAU COUNTY BOARD OF ETHICS REPORT SUMMARY CONTINUED

WHAT WE RECOMMENDED

Several of the recommendations made during the audit have already *been implemented* by the newly reconstituted Board of Ethics.

Exercise Broader Authority to Enforce the Code of Ethics:

- Hire a full-time Executive Director to implement reforms and accomplish the educational goals of the Board, fostering a culture of ethics in Nassau County.
- Actively conduct investigations and implement enforcement actions when appropriate.
- Create and post written procedures for filing complaints, requesting advisory opinions and addressing nepotism related issues.

Financial Disclosure Forms:

- Implement an electronic financial disclosure system to cross reference County employees with County vendors. *The County Executive has recently announced such a system will be implemented this year.*
- Board Members, not just Counsel to the Board, should review financial disclosure forms to determine if there are any nepotism related issues which need to be addressed.
- Consider imposing sanctions for employees who do not file financial disclosure forms timely.

Advisory Opinions:

- Provide advisory opinions, which offer guidance to public servants seeking to avoid ethical missteps, when requested regarding ethical issues.
- Strengthen the Code of Ethics by amending the County Charter to clarify the Board’s authority to, and mandate that, the Board provide advisory opinions concerning the Code of Ethics to County department heads and elected officials regardless of whether or not such advice is related to himself or herself.

Board Actions:

- Complete annual reports and post them on the Board’s website.
- Maintain logs of complaints received.
- Advise the County Executive immediately of any vacancies so that they may be filled within 60 days as required by the Code, and the County Executive should seek diversity in gender and occupational background for future Board selection.

Education:

- Update the County’s website to include more information and resources for employees and the public. *Auditors have evaluated the Board of Ethics’s newly updated website and have re-ranked it from near the bottom of comparable websites to the second best. Additionally, some old redacted advisory opinions have recently been posted to the Board of Ethics website.*
- Hold Board of Ethics meetings which are accessible to the public and which adhere to the Open Meetings Law. *Recent meetings have included agendas available to the public, adoption of minutes and compliance with the Open Meetings Law.*
- Ensure that County officers, employees and vendors are knowledgeable of the Ethics Laws and have easy access to obtain additional information. This may be accomplished by displaying the Code of Ethics in all County Departments in both employee and public areas and adapting or creating posters as used in other municipalities, which include information on ethical situations employees may encounter, including nepotism.
- Work with the Office of Human Resources and the Bureau of Printing and Graphics to ensure that all County employees receive a copy of the updated Code of Ethics Booklet.
- Make ethics training more accessible to County employees, including the preparation of and posting of training videos on the Ethics website, which County employees may watch at their convenience.

WHAT WAS THE RESPONSE?

The Board’s response did not address all report recommendations, however, auditors have observed new Board Members having robust discussions about a multitude of potential reforms at recent Ethics Board Meetings, signaling a movement towards more transparent and accessible operations.

WHY IS THIS REPORT IMPORTANT?

Preventing the proliferation of nepotism in Nassau County government and instituting a “Culture of Ethics” is a major undertaking. Auditing the Board of Ethics, which is responsible for enforcing the Ethics Code, provided many useful recommendations for improvement and several have already been implemented. It is imperative that Nassau County policy makers work to restore the public’s trust in their government’s operations, and a transparent and accessible Board of Ethics is a critical part of the process.

Executive Summary

Purpose and Introduction:

This is the first report in an audit series regarding “nepotism” in Nassau County. *Nepotism* is the practice among those with power or influence of favoring relatives or friends, especially by providing jobs. This practice has a negative impact on the morale of current County employees and County residents and taxpayers, who deserve a well-qualified workforce.

The primary law governing Nepotism in the County is the Nassau County Administrative Code § 22-4.3 concerning Financial Disclosure, and the County Charter’s Code of Ethics, which in §2218 (7) states that:

Hiring and supervision of relatives. No officer or employee of the County shall hire or induce others to hire a relative of such officer or employee nor shall any officer or employee of the County directly supervise or evaluate the work of any relative employed by the County except:

- a) as required by the Civil Service Law or rules promulgated thereunder;
- b) pursuant to a supervisory arrangement that began prior to the effective date of this subdivision; or
- c) with the written approval of the Board of Ethics.

In determining whether to approve the request of an officer or employee to hire or supervise a relative, the Board shall consider, among other things,

- the nature of the relationship at issue and any steps that have been taken to ensure objectivity in any such hiring decision,
- salary determination,
- evaluations,
- recommendations for promotions and increases and other aspects of a supervisory relationship.

Neither such request for Board approval nor the determination of the Board shall be confidential. Nothing in this subdivision, nor any approval issued by the Board pursuant to this subdivision, shall relieve an employee of the continuing requirement to exercise his job duties in the best interests of the County, without giving raises, promotions or other beneficial terms or conditions of employment based on private interests or personal relationships, and the Board may continue to enforce such requirement, as it deems appropriate, whether or not it has approved the hiring or supervision of a relative.

The starting point for an audit of nepotism practices in Nassau County is logically the Board of Ethics, as it is charged with administering and enforcing the Code of Ethics and the financial disclosure requirement. The broad objectives of this report were to review the various functions of the Board of Ethics, and the Nassau County Code of Ethics, including an evaluation of internal controls regarding conflicts of interest with related parties (Nassau County employees and County vendors).

Executive Summary

The primary goal of the Nassau County Board of Ethics (“The Board”) is to assist County officers and employees in avoiding ethical missteps before they occur through ethics education. The Board provides confidential advice to County officers and employees regarding their ethical responsibilities under the Nassau County Code of Ethics and other applicable laws.

The Board also investigates complaints of ethical misconduct and administers the County’s Financial Disclosure program.

The purpose of the Nassau County Code of Ethics is to foster integrity in government, promote public confidence, and help County officers and employees to discharge their official duties without fear of unwarranted accusations of unethical conduct. Boards can provide guidance through a comprehensive education program which includes informative websites and issuing and making available transparent advisory opinions.

The Code of Ethics is binding on all paid and unpaid County officers and employees, including members of County boards and commissions.¹

Board of Ethics and Nepotism

In the Board’s response to the Draft Audit provided on March 7, 2019², the Board states that it only becomes involved in questions of nepotism or potential nepotism “in three circumstances:

first, when a county officer or employee requests ethics advice concerning potential nepotism;

second, when nepotism is self-reported on an annual statement of financial disclosure, or

third, when nepotism is the subject of a complaint” (emphasis in original).

Even with this limited approach, the prior Board failed in its mission.

A review of the Code of Ethics clearly shows that any requests to the Board concerning nepotism should be handled by the Board pursuant to the Code of Ethics §2218(7) concerning the “**Hiring and supervision of relatives**” (nepotism) and not as an advisory opinion. Indeed, the Board’s response belies the Code of Ethics §2218(7), which specifically requires the Board of Ethics to take a broader and transparent approach in enforcing the anti-nepotism provisions of the Code of Ethics. **Despite the Board’s contention that it essentially only gets involved in Nepotism when asked, the Code of Ethics §2218(7) specifically empowers the Board of Ethics to enforce the anti-nepotism provision whether or not it has been asked to do so.**

This broader mandate is clearly the intention of the Legislature which has chosen to place its policy against nepotism within the Code of Ethics and under the authority of the Board of Ethics. Section 2218(7) concerning the “**Hiring and supervision of relatives**” (nepotism) specifically requires that any non-statutory exception to the anti-nepotism policy shall be granted only “with the written approval of the Board of Ethics” and that “Neither such a request for Board approval nor the determination of the Board **shall be confidential**” (emphasis added). Thus, §2218(7) concerning

¹ The Nassau County Code of Ethics is included in Section 2218 of the Nassau County Charter as amended by Local Law No. 4-2007 and Local Law No. 6-2017.

² See Appendix H for full response from the Board of Ethics dated March 7, 2019

Executive Summary

the “**Hiring and supervision of relatives**” (nepotism) requires the Board of Ethics to make anti-nepotism decisions in an open and transparent manner, completely and separately apart from an officer’s or employee’s ability to seek advisory opinions or the Board’s authority to issue advisory opinions and, as noted above, to enforce the anti-nepotism provision **whether or not it has approved or been asked to approve** an exception to such policies. Any requests concerning nepotism should be handled by the Board pursuant to transparent §2218(7) and not as an advisory opinion.

In its response to the Draft Audit, the Board doubles down on this limited “hear-no-evil-see-no-evil” approach to the anti-nepotism policy, when it states that it “has not learned of any instances of prohibited nepotism through the financial disclosure program,” a program which this audit notes has not been fully carried out and in particular with respect to the Board’s lack of review of such disclosure statements. How can the Board reasonably state that it “has not learned of any instances of prohibited nepotism through the financial disclosure program,” when it has not comprehensively reviewed such disclosures?

Board of Ethics, Nepotism and Financial Disclosure Program

The annual financial disclosure forms are an important tool for detecting violations of nepotism policies. It is instructive that the Board of Ethics has recognized this by referencing this program in relation to anti-nepotism detection (see above). Yet, here again, in exercising its mandate to administer the annual disclosure program, the Board chose to limit exercise of its authority, disregarding its broader mandate. This is done despite the Board expressing statutory authority to broadly enforce such requirements, Nassau County Administrative Code §22-4.3 and New York State General Municipal Law, Article 18, §811(c)&(d).

The Summary of Findings and Recommendations as a result of this audit can be found on the next page.

Executive Summary

Summary of Audit Findings and Recommendations		
#	Audit Finding	Audit Recommendations
1	The Auditors Found a Lack of Transparency Regarding the Meetings of the Board of Ethics	The Nassau County Board of Ethics should follow both “Governmental Best Practices” and “NYS Open Meetings Law.” They should operate in an open and transparent manner in all dealings including meeting announcements, and procedures so that the public may observe the performance of the Board, its deliberations and its decisions. Having an Ethics Board which is easily accessible to both employees and the public is important to regaining the public’s trust in Nassau County’s governmental operations.
2	The Nassau County Board of Ethics Website is Inadequate and is Ranked Near the Bottom of the Nine Comparable Websites Examined by the Auditors	The Nassau County Board of Ethics should immediately work on improving their website to make it more informative for County Officers, employees, vendors and taxpayers aspiring to be as informative as New York State, New York City and Suffolk County. An informative and easy to navigate website will provide an important resource for the public to keep a check on government operations.
3	Information and Forms Needed to File a Complaint or Violation were Not Made Accessible by the Nassau County Board of Ethics	The Nassau County Board of Ethics should create a written procedures document to be displayed on the public webpage with guidance on how to submit a complaint or violation, as well as an actual complaint form in order to facilitate the filing of a complaint.
4	The Nassau County Code of Ethics is Not Posted or Promoted in County Buildings or Key County Locations for Officers, Employees and Vendors	The Nassau County Board of Ethics should ensure officers, employees and vendors are knowledgeable in the Ethics Laws and have easy access to obtain additional information by: a) Displaying the code of ethics in all County Departments in both employee and public areas; and b) Adapting or creating posters, which include information on the prohibition of the hiring or supervision or relatives (nepotism) or using other methods to convey the Ethics Laws to the employees and vendors of Nassau County.
5	The Board of Ethics has Operated with Less Than the Required Five Members and Consistently Lacked Diversity	The Board/Legislature/County Executive should on an ongoing basis: a) Ensure the full membership of five Board of Ethics Members is maintained by appointing new member(s) within sixty (60) days, as it states in the Code of Ethics; and b) Look for diversity in gender and occupational background for Board selection.
6	The Board did not Conduct Any Investigations or Impose Any Sanctions During the Period 2016 Through July 2018.	The Nassau County Board of Ethics should: a) actively conduct investigations and consider the imposition of sanctions when appropriate; b) provide advisory opinions when a County officer or employee, or former officer or employee requests advice regarding ethical issues relative to themselves or to the head of a County agency, the County Executive or a County Legislator; c) amend Section 2218 (10)(d) of the County Charter to clarify the Board’s authority to, and mandate that, the Board provide advisory opinions concerning the Code of Ethics to county department heads and elected officials regardless of whether or not such advice is related to himself or herself; d) maintain logs of all complaints received; and e) present the Board minutes ‘open to the public’ information to show transparency of the Board’s activities.

Executive Summary

Summary of Audit Findings and Recommendations		
#	Audit Finding	Audit Recommendations
7	The Board of Ethics Would Not Allow Auditors to View Any Nassau County Advisory Opinions	<p>The Nassau County Board of Ethics should:</p> <ul style="list-style-type: none"> a) post redacted advisory opinions on their website to help guide County officials and employees on ethical questions they may have, to assist in preventing ethical missteps before they happen; and b) post these opinions in an indexed, searchable manner.
8	The Lack of an Annual Report Denies Employees and Residents the Ability to Evaluate the Board's Roles and Responsibilities	<p>The Nassau County Board of Ethics should:</p> <ul style="list-style-type: none"> a) give priority to preparing its 2017 Annual Report; b) have annual reports available to the employees and residents; and c) have annual reports posted on the Nassau County Board of Ethics website.
9	Most County Employees Have Not Received the Updated Code of Ethics and Formal Ethics Training	<p>The Nassau County Board of Ethics should:</p> <ul style="list-style-type: none"> a) work with the Office of Human Resources and the Bureau of Printing and Graphics to ensure that all County employees receive a copy of the updated Code of Ethics Booklet and/or a link to it on the Board of Ethics' website; b) provide ethics training to the officials, attorneys, and department heads who were unable to attend previous sessions; and c) consider rolling out ethics training to all County employees. (The Auditors note that the training documents provided by the Counsel to the Board of Ethics, who presents the training and has extensive training expertise, were comprehensive and well written.)
10	Emails to the Board of Ethics Were Read by Individuals Not Then Associated With the Board	To avoid the appearance of conflicts of interest and safeguard the confidentiality of individuals who wish to communicate with them, Nassau County Board of Ethics should obtain assistance from IT to limit access to their emails at their Nassau County email address to Board Members and the Board's Secretary.
11	The Board of Ethics did not Receive 100% Compliance with the Filing of 2017 Financial Disclosure Forms and Did Not Impose Fines on those Who Failed to Comply	<p>The Nassau County Board of Ethics should:</p> <ul style="list-style-type: none"> a) review the employment/job status of each individual/employee who did not file their 2017 Financial Disclosure Form; and b) for those employees who are required to file, follow-up with Department Heads/HR Reps to ensure that the forms are submitted. If the forms are not submitted after the follow-up, consider imposing appropriate penalties.
12	The Prior Board of Ethics Was Not Fully Reviewing Financial Disclosure Forms and Needs an Electronic System to Cross-Reference County Employees with County Vendors	<p>The Nassau County Board of Ethics should:</p> <ul style="list-style-type: none"> a) work with the County Legislature, Administration, the Office of Human Resources and IT to expedite the implementation of an electronic Financial Disclosure Form and an electronic cross-reference system; b) fully review all financial disclosure forms; c) consider adding a certification statement to be signed by the filer, attesting to the truthfulness of their responses; d) consider expanding the requirement for financial disclosure of domestic partners and require preparer to list siblings, parents, non-dependent children on Financial Disclosure form; and e) require filers to identify any relatives who work for the County and other local municipalities.

Executive Summary

Summary of Audit Findings and Recommendations		
#	Audit Finding	Audit Recommendations
13	The Board of Ethics Must Develop Additional Policies and Procedures, Including Guidance for Departments with Related Employees	The Nassau County Board of Ethics should: a) give high priority to its review and codification of its policies and procedures, adding them to its webpage if appropriate; and b) work with the Office of Human Resources and the Office of Labor Relations to develop written procedures for the hiring and supervision of relatives, which should be distributed to all County departments.
14	The Counsel to the Board is Involved in Many Contracts with Nassau County	a) The Counsel to the Board of Ethics should have no other contracts with Nassau County; and b) The County Attorney's Office should consider updating the Counsel's contract to eliminate the language that states Counsel "from time to time, shall provide general legal advice and assistance to the Nassau County Attorney or his designee," as the Counsel's contract should be solely dedicated to the Board of Ethics.
15	The Counsel's Representation of Both the Nassau County Board of Ethics and Various Towns & Villages Boards of Ethics in Nassau County Creates Potential Conflicts of Interest	The Nassau County Board of Ethics should consider hiring an Executive Director under Civil Service developed requirements, (see Appendix F) and not contract with outside counsel who also represents other towns and villages in Nassau County. An Executive Director can handle the duties currently performed and it will allow the Board of Ethics to have an employee solely dedicated to Nassau County's Ethics. The County Executive and Legislature should consider Charter changes which: a) rework the supportive structure of the Board of Ethics to be fully independent of either branch of government and not having any County employees; and b) develop a revised code to include removing the County Attorney as a member and providing independent resources.
16	Board of Ethics Contract Has Been Violated by Using an Independent Attorney not Specified in the Contract	a) The Nassau County Board of Ethics should review the Financial Disclosure forms and consult with the Counsel to the Board for guidance on the forms in the Board of Ethics meetings; b) The Counsel to the Board be the only party of his firm involved in the Board of Ethics, as per the language of the contract; and c) The original Financial Disclosure Forms should not be taken off of County property.

The matters covered in this report have been discussed with the officials of Nassau County Board of Ethics. On January 11, 2019 we submitted a draft report to Nassau County Board of Ethics for their review. Nassau County Board of Ethics provided their response on March 7, 2019. Their response and our follow up to their response are included at the end of this report.

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Introduction

Background

Ethics in Nassau County Government

Nassau County was established on January 1, 1899. At that time the County had only 55,500 residents.³ The County currently has a population of approximately 1.4 million.⁴ Within Nassau County there are two cities, three towns, 64 incorporated villages and over 100 unincorporated areas. The entire County is physically divided among the three towns: Hempstead, North Hempstead and Oyster Bay, and the two cities: Long Beach and Glen Cove. Within the three towns reside the 64 incorporated villages. As of September 2018, the County employs over 7,488 full-time and 1,324 part-time employees.⁵

Nassau County government recently experienced a series of corruption allegations, culminating in the indictments and conviction of officials related to Nassau County's contracting process. Charges filed included:

- conspiracy to commit extortion under color of official right;
- extortion under color of official right;
- solicitation of bribes and gratuities;
- conspiracy to commit federal program bribery;
- conspiracy to commit honest services fraud;
- extortion;
- false statements; and
- obstruction of justice.⁶

In March of 2019, former County Executive Edward Mangano was found guilty of multiple counts of accepting bribes and kickbacks in exchange for government action. Specifically, Mr. Mangano was found guilty of Bribery and Honest Services Wire Fraud, and his wife Linda Mangano was convicted of Conspiracy to Obstruct Justice and Making False Statements.

Corruption allegations and convictions weaken the public's trust in their government's operations. The public has a "fiduciary" relationship with their government representatives, whereby the people trust their representatives to carry out duties in the best interests of the people, while not taking personal advantage of their privileged position.⁷ Restoring the public's trust in government is a rebuilding process which requires an examination of systems, identification of weaknesses in internal controls and meaningful changes that are transparently implemented.

³ History of Nassau County, Nassau County, NY – Official Website.

⁴ United States Census Bureau, 2017 Population Estimate (as of July 1, 2017).

⁵ Per the County Director of Payroll - actual number of employees on payroll as of September 12, 2018. The counts do not include employees of Nassau Community College.

⁶ United States District Court Eastern District of New York Indictment No. CR-16-540 and No. CR-18-0087; and United States District Court Southern District of New York Superseding Indictment S1 15 Cr. 317 (KMW)

⁷ Maintaining and Restoring Public Trust in Government Agencies and their Employees, Craig W. Thomas, Administration & Society, Vol 30, No. 2 May 1998.

Introduction

The Nassau County Code of Ethics includes a “Gift and Favor Prohibition” which states:

“No officer or employee of the County, whether paid or unpaid, shall accept gifts aggregating to seventy-five dollars (\$75.00) or more during a twelve-month period, nor solicit any gift of any value, whether in the form of services, loan, thing or promise of any other form, from any one person, firm or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business or professional dealings with the County or any agency thereof. For purposes of this subdivision, the value of a gift of a ticket or comparable authorization entitled the holder to food, refreshments, entertainment or any other benefit shall be the face value of the ticket or the cost of entrance to the general public, notwithstanding the fact that part of the cost of attending is a tax-deductible or political contribution.”⁸

The indictments mentioned above included allegations of a County Officer being given vacations, meals, hardwood flooring in his home, an expensive watch, and a massage chair. Despite the provisions above, this individual portrayed these items as gifts rather than inducements or kickbacks.

A news article in October 2017 disclosed that more than 100 current and former Nassau County officials, high-level appointees, political club leaders and employees had at least one family member working in local government at some point between 2015 and 2017.⁹ *This suggests the practice of nepotism has taken place in Nassau County governments.*

New leaders in Nassau County took office in 2018 and pledged to restore people’s trust in local government operations. The review of the practice of nepotism in Nassau County therefore begins with an examination of the operations of the Board of Ethics, as it is charged with enforcing the Code of Ethics, an integral part of all officer and employee behavior, hiring practices, and the analysis of related parties (nepotism) in Nassau County Government. ***A well-functioning and transparent Board of Ethics is vital to the restoration of the people’s trust in Nassau County government, and will help foster a culture of ethics throughout the County.***

This multi-part audit will also include reviews of the Nassau County Civil Service Commission and the Nassau County Office of Human Resources, and will continue with additional sections going forward.

Law:

In 1964, New York State consolidated and standardized its ethics laws into Article 18, NYS General Municipal Law, sections 800-809.¹⁰ The purpose of Article 18 was to provide state-wide rules relating to conflicts of interest on the part of municipal officers and employees.¹¹ For 50 years, Article 18 has maintained its municipal ethics regulation: prohibiting interests in contracts with the municipality, leaving the regulation of all other unethical conduct to the individual

⁸ Nassau County Code of Ethics, Section 2218 of the Nassau County Charter as amended by Local Law No 4-2007 and Local Law No. 6-2017, Paragraph 3.

⁹ *Newsday*, October 14, 2017, “Over 100 Nassau politicians also have family in government”.

¹⁰ Gen. Mun. Law § 800-813.

¹¹ NYS Office of the State Comptroller, “Conflicts of Interest: Municipal Officers and Employees the Fundamentals of Article 18 of the General Municipal Law”.

Introduction

municipalities.¹² Amendments to Article 18 over the years have mandated financial disclosure in large municipalities and added restrictions on municipal officials' property interests.

Section 806(1) (a) of the NYS General Municipal Law provides that the governing body of every county shall by local law, ordinance or resolution adopt a code of ethics. Section 808(1) states that the governing body of a county may establish a county board of ethics, and subdivision (2) indicates that this Board of Ethics "shall render advisory opinions to officers and employees of municipalities wholly or partly within the county..."

The 'county government law' of Nassau County establishing the Code of Ethics and the Board of Ethics, is found in Section 2218 of the Nassau County Charter as amended by Local Law No. 4-2007 and Local Law No. 6-2017.

Best Practices:

The State Comptroller's Office has prepared a model code of ethics for municipalities which is available on the State Comptroller's website.¹³ Article 18 requires every municipality to post a copy of sections 800-809 of the General Municipal Law in each public building under the jurisdiction of the municipality, in a place conspicuous to its officers and employees.¹⁴ To facilitate compliance with the posting requirement, the State Comptroller's Office has prepared a poster of these sections which is available on the State Comptroller's website.

Nassau County Code of Ethics:

The Nassau County Code of Ethics was established to assist County officials and employees in avoiding actual or potential conflicts of interest. According to the Plain language guide on the Code of Ethics: "The purpose of the Code of Ethics is to foster integrity in government, promote public confidence, and help County officers and employees to discharge their official duties without fear of unwarranted accusations of unethical conduct."¹⁵

Hiring and Supervision of Relatives (Nepotism):

Under the Code of Ethics, officers and employees may not hire or induce others to hire their relatives. They may not directly supervise or evaluate their relatives, unless an exemption is granted through written approval by the Board of Ethics. **The Auditors reviewed the Codes of Ethics and/or ethics laws and guidelines of several comparable New York State counties and noted that only Nassau County's Code of Ethics contained this significant provision.**

According to the Board of Ethics' Plain Language Guide, major provisions of the Code of Ethics¹⁶ include but are not limited to:

¹² NYSBA/MLRC *Municipal Lawyer*, "[The Legislative History of New York State's Conflicts of Interest Law for Municipal Officials](#)", Ivy Chiu and Mark Davies.

¹³ See Office of State Comptroller, Model Code of Ethics for Local Governments, available at <http://www.osc.state.ny.us/localgov/pubs/codeofethics.pdf>; Model Code of Ethics for Fire Districts.

¹⁴ General Municipal Law § 807.

¹⁵ Nassau County Code of Ethics Booklet, Plain language guide.

¹⁶ The Nassau County Code of Ethics is included in Section 2218 of the Nassau County Charter as amended by Local Law No. 4-2007 and Local Law No. 6-2017.

Introduction

- Officers and employees may not use their position for private financial gains. They may not take any actions as a public servant for the purpose of obtaining a financial benefit for themselves, a member of their immediate family, or anyone with whom they have a business or financial relationship.
- County officials, employees and members of their immediate family may not enter into any kind of contract with the County.
- If you are paid by the County, you may not own any part of a business that does business with the County or be an officer or director of such a business.
- You may not do any work for the County on a contract if you are an agent or principal of a firm that is interested in the contract, if you are an owner of any stock in a firm that is interested in the contract, or if you will profit from the contract in any way. You may not attempt to influence any action on such a contract.
- County resources such as letterhead, personnel, equipment, or supplies may not be used for non-County purposes. You may not perform personal or private activities during times when you are required to work for the County.
- You may not accept gifts or favors worth more than \$75 per year from anyone other than your parent, spouse or child, if you know the person is interested in doing business with the County. You may not request or encourage gifts of any value from any person, other than your parent, spouse or child, who is interested in business dealings with the County. Additionally, you may not accept a reward for performing your duties as a County officer or employee.¹⁷
- You may not have an outside job or engage in outside activities that conflict with your duties as a County officer or employee.
- Former County officers and employees must comply with certain post-employment restrictions. For two years after leaving County service, they may not communicate with any County agency on behalf of an entity with which they have a business relationship, other than a governmental entity. With limited exceptions, after leaving County service, they may not work on a matter they personally and substantially worked on for the County.
- You must disclose any interest you have in existing or proposed County legislation or contracts to the Board of Ethics and your immediate supervisor.

¹⁷ Nassau County Code of Ethics, Section 2218 of the Nassau County Charter. Executive Order No. 2 – 2018, “*Zero-Tolerance Policy for Receiving Gifts*” dated February 26, 2018 prohibits any gifts to most County employees, see the “Executive Orders” section of this report.

Introduction

Executive Orders:

The County Executive of the County of Nassau issued two relevant Executive Orders in 2018. They are as follows:

Executive Order No. 1 – 2018, dated January 18, 2018, states that the new administration “*was elected as a direct response to that culture of corruption and favoritism with a mandate to eliminate that culture from county government.*” One effective tool in limiting “*the corrupting influence of party politicians*” is to limit “*county executive appointees’ participation in party politics.*”

The Order prohibits executives and officials¹⁸ from holding any office or position of authority in any political party committee (other than committee person) and prohibits executives and officials from contributing any sum of money to a campaign committee for the election to office of the current County Executive.

Executive Order No. 2 – 2018, dated February 26, 2018, states that “*state, town and county governments have been troubled by the culture of corruption and favoritism, stemming, in part, from a lack of controls on the system of county contracting and procurement.*” The Order established a zero-tolerance policy for the receiving of gifts by County employees who are involved in or participate in the contracting and procurement process. The Order prohibits:

- a. vendors from giving gifts of any value to County employees;
- b. employees from accepting any gift of value from vendors;
- c. employees accepting payment for services rendered to vendors; and
- d. with limited exceptions, employees accepting cash discounts on the purchase of goods or services received in connection with County employment.

This Executive Order supersedes the \$75 gift limit included in the current Code of Ethics for select County employees.

Annual Financial Disclosure Form:

The Nassau County Administrative Code requires certain officers and employees of the County to file an annual Financial Disclosure Form.¹⁹ The Board of Ethics administers and enforces the filing of the Financial Disclosure forms and the financial disclosure requirements of County officials, officers and employees. The Board may impose penalties if the individuals fail to comply.

¹⁸ “Any member of the county executive staff, any deputy county executive, any county executive appointed commissioner or any other county executive appointed head of any county executive department, or agency or any deputy commissioner or any other deputy head or any county executive department or agency is prohibited and further.”

¹⁹ Nassau County Administrative Code, Section 22-4.3 (c).

Introduction

Roles and Responsibilities of County Officers and Employees:

The Counsel to the Board of Ethics provides in-person ethics and conflict of interest training to key County employees, including County Attorney staff, Departmental attorneys, and employees of the Office of the County Executive. According to the Office of Human Resources' Policy, during employee orientation, all new County officers and employees should be issued a Code of Ethics booklet, which explains the County's Code of Ethics policy in plain language. The new hires are required to complete an acknowledgement form, which states that it is their obligation and responsibility to fully comply with the County's Code of Ethics policy. A copy of the acknowledgement should be placed in the employee's personnel file.

Penalties for Violations of the Code of Ethics:

Violation of the Nassau County Administrative Code regarding financial disclosure, or of the Code of Ethics, by a County officer or employee, may result in a penalty. Penalties may include forfeiture of pay, suspension, the imposition of a fine/civil penalty up to \$10,000 per violation, or removal from office or employment. This includes violations as related to the hiring and supervision of relatives (nepotism). These penalties may be imposed by the Board of Ethics after a due process hearing is conducted. Penalties may also be imposed on former employees for violations of the post-employment restrictions contained in the Code of Ethics.

Nassau County Board of Ethics:

The Nassau County Board of Ethics consists of five members, four of whom are appointed by the County Executive, subject to confirmation by the County Legislature. The members must live in Nassau County, and serve without compensation. Not more than two members can be members of the same political party. The fifth member of the Board of Ethics is the Nassau County Attorney. With the exception of the County Attorney, each member serves for a term of five years.

The Board of Ethics has had less than the statutory number of members from 2013 to 2018. As of August 2018, the Board has a full complement of members, all whom were appointed in 2018, as identified in Exhibit I.

Exhibit I

Nassau County Board of Ethics: Members	Date Appointed
Kenneth Gartner, Esq., Chairman	04/23/18
Michael Pernick, Esq.	04/23/18
Jared Kasshau, Esq., Nassau County Attorney	01/01/18
Daniel Palmieri, Esq.	08/05/18
Christopher Devane, Esq.	08/05/18

Introduction

The Board of Ethics has the authority to investigate complaints of actions that violate the County's Code of Ethics and the authority to initiate an investigation by a majority vote of the Board. ²⁰

The Board of Ethics should be rendering advisory opinions when a County officer or employee, or former officer or employee requests advice regarding ethical issues relative to themselves, or to the head of a County agency, the County Executive or a County Legislator.

The Board of Ethics is advised by Legal Counsel and assisted by an employee of the County Attorney's Office, who serves as the Secretary to the Board.

Audit Scope, Objectives and Methodology

The time period covered by the review was January 1, 2016 through the date of this report.

The objective was to review the various functions of the Board of Ethics, and the Nassau County Code of Ethics. The review included an evaluation of internal controls regarding conflicts of interest with related parties (Nassau County employees and County vendors).

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

²⁰ Section 2218 of the Nassau County Government Law, Code of Ethics. 10.b.

Scope Limitation

The Board of Ethics Declined to Provide Certain Requested Documentation and Responses to Questions, Thereby Limiting the Scope of the Audit

The audit field work of the Board of Ethics limited review was complicated by a lack of cooperation by the Counsel to the Board of Ethics who declined to provide certain requested documents and answers to written questions from the Auditors, as detailed below.

As normal audit protocol, the Auditors submitted a *Document Request List* and a list of questions to the Counsel, who had been designated as the Board's liaison to the audit team.

The Comptroller's Office received the Counsel's written responses to the auditor's Document Request List and the list of questions.

The Counsel to the Board of Ethics declined to provide the following requested documents:

- **Access to review the 2016 and 2017 Annual Statement of Financial Disclosures** filed by County officials, employees, and committee members. The Counsel requested that the Auditors request a sample of the Disclosure Forms, (for example, three randomly selected letters of the alphabet) and noted that the forms provided would be redacted. Auditors expect to have viewing access to significant documents such as financial disclosure forms, without being limited.
- **A log or list of requests for informational letters or advisory opinions received by the Board** for the period January 1, 2016 through the present date and related responses from the Board. The Counsel indicated that the Board had received no informational letters for the period and noted that the Board of Ethics objected to this request. The Counsel also noted that the request for advisory opinions was beyond the scope of the audit.

The Counsel to the Board of Ethics declined to provide answers to the following written questions:

Who presently has access to emails addressed to the Board of Ethics and who in the past five years has had access to emails addressed to the Board? See Audit Finding (10) for additional details regarding this request.

- *Can you advise us of the political parties represented by each Board Member?* All current Board members were appointed in 2018. The Nassau County Code of Ethics states that "not more than two (2) board members shall be in the same political party".²¹ The Auditors wanted to verify that the Board political makeup was in compliance with the Code.

The Auditors requested that the Counsel explain the Board appointment process and asked if candidates were provided with information on Board duties and responsibilities. The Counsel advised that the Board of Ethics objected to this request.

²¹ Nassau County Code of Ethics Section 10a.

Scope Limitation

In most instances the Counsel replied that the questions were beyond the scope of the audit. See Appendices C & D for copies of the Counsel's September 7, 2018 responses to the Audit Division Document Request List and the Audit Division Question List.

Additionally, Auditors were supplied with minutes to the public sessions of Board of Ethics Meetings between January 1, 2016 to the present. In these board minutes, for sixteen instances out of seventeen instances, the Board did not include the reasons why they went into Executive Session. As noted in Audit Finding (1) which follows, the Board is required to announce publicly the purpose for going into Executive session. The purpose for going into Executive Session should be stated for accountability and transparency.

It should be noted that throughout the audit process, the Comptroller's Office was limited to communicating to the Board through the Counsel to the Board, rather than having direct contact with Board members. **The Counsel to the Board of Ethics rejected the Comptroller Office's request for the e-mail addresses of the Board members so that the draft audit report could be distributed directly to them.** On December 11, 2018, the Counsel sent an e-mail to the Comptroller's Office stating, in part, the following:

"The Board of Ethics functions as a quasi-judicial administrative agency. To protect the integrity of its fact finding and deliberative processes, communications to Board members are made through the Board's secretary or counsel....The email address of the Board of Ethics is boardofethics@nassaucountyny.gov... Individual Board members do not have County email addresses....Please be reminded of my request.... that all communications regarding the Comptroller's audit of the Board of Ethics be made through me in my capacity as counsel to the Board."

Findings and Recommendations

AUDIT FINDING (1)

(1) The Auditors Found a Lack of Transparency Regarding the Meetings of the Board of Ethics

The NYS Public Officer's Law requires public business be performed in an open and public manner to observe the performance of public officials, listen to the deliberations and decisions that go into the making of public policy.²² Operating in an "open and public manner" is a Governmental Best Practice referred to as transparency. Transparency is important for the Board of Ethics when they review matters regarding the conduct of public officers and employees.

The Board of Ethics is considered a "public body" by NYS General Municipal Law and is required to comply with the Open Meetings Law ("OML"). Per Section 104 of the OML, a "meeting" is a gathering of a majority of the members of a public body, and every meeting must be preceded by notice of the time and place given. Although the Nassau Board of Ethics posted the date of the next meeting on the website, when Auditors attempted to attend (unannounced as a member of the public) they noticed the meeting room number was not included. Also, when they arrived ten minutes before the meeting, they could not get in as the building doors were locked and the Security Guard was not informed of the meeting. An unrelated County employee let the Auditors into the building. Neither the agenda nor the prior meeting minutes were on the Board of Ethics (Nassau County) website. Those items would create public interest in attendance and also allow the public to prepare for a meeting.

In addition, at the first three meetings that the Auditors (the public) attended:

- **Agendas were not provided to the members of the public attending the meeting;**
- **Auditors observed meetings began without an acceptance of the prior meetings' minutes; and**
- **The public was asked to leave so that the Board could speak in Executive Session, but did not state the reason for going into Executive Session, which is required by the NYS Open Meetings Law (see below). (An executive session is a portion of a meeting not open to the general public.)**

Under NYS Open Meetings Law Section 105, Executive Sessions can only be for one of the following reasons otherwise the public is permitted to be in attendance:

- matters which will imperil the public safety if disclosed;
- any matter which may disclose the identity of a law enforcement agent or informer;
- information relating to current or future investigation or prosecution;
- discussions regarding proposed, pending or current litigation;
- collective negotiations pursuant to Article 14 of Civil Service Law;

²² §100. Legislative Declaration/www.dos.ny.gov/coog/openmeetlaw.html.

Findings and Recommendations

- the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- the preparation, grading, or administration of examinations; and
- the proposed acquisition, sale or lease of real property.

Audit Recommendation:

The Nassau County Board of Ethics should follow both “Governmental Best Practices” and “NYS Open Meetings Law.” They should operate in an open and transparent manner in all dealings including meeting announcements, and procedures so that the public may observe the performance of the Board, its deliberations and its decisions. Having an Ethics Board which is easily accessible to both employees and the public is important to regaining the public’s trust in Nassau County’s governmental operations.

AUDIT FINDING (2)

(2) The Nassau County Board of Ethics Website is Inadequate and is Ranked Near the Bottom of the Nine Comparable Websites Examined by the Auditors

The Nassau County Code of Ethics states “The Board shall include a webpage on the Official Website of Nassau County containing **guidance documents**, web based instructional and **educational resources** and **any forms necessary to seek advisory opinions or to file an ethics complaint**”.²³ A robust website providing information for County Officers, employees, vendors and taxpayers is an important resource for the public to keep a check on government operations, and can provide useful guidance on restrictions for the hiring and supervision of relatives (nepotism).

The Nassau County Board of Ethics website currently includes the Employee Code of Ethics booklet, the Code of Ethics Local Law 6-2017, FOIL Request Form, Contact Phone Number, Financial Disclosure Form and Date and Location of the Next Board Meeting. Below is a screenshot of the website at the time of the audit.²⁴

²³ Nassau County Local Law No. 6-2017, Amendments to the Code of Ethics.

²⁴ This screenshot of the Nassau County Board of Ethics website was taken from www.nassaucountyny.gov/2324/Board-of-Ethics on July 20, 2018.

Findings and Recommendations

Exhibit II – July 2018

The screenshot shows the Nassau County Board of Ethics website. The header includes the Nassau County logo and the text "NASSAU COUNTY LONG ISLAND, NEW YORK". A search bar is located in the top right corner. Below the header is a navigation menu with links for GOVERNMENT, DEPARTMENTS, RESIDENTS, VISIT NASSAU, BUSINESS & INVESTOR RELATIONS, E-SERVICES, and NASSAU A-Z. The main content area features a "Board of Ethics" section with a "PUBLIC NOTICE" table. The table lists the date as Tuesday, July 24th, 2018, at 8:00 A.M., located at One West Street, 2nd Floor, Mineola, NY 11501. The topics are Public Session and Executive Session. To the right of the table is a "CONTACT US" section with a "Contact Us" link, address (One West Street, 2nd Floor, Mineola, NY 11501), phone number (516) 571-3056, and a "Select Language" dropdown menu. Below the table is a "Responsibilities" section with a paragraph of text and three links: "Code of Ethics-Local Law 6-2017", "Code of Ethics Booklet", and "Financial Disclosure Form - Reporting Year 2017". The footer contains links for Home, Accessibility, Browser Support, Copyright Notices, Disclaimer, Employment, Privacy Policy, Site Map, Contact Us, and Powered by CivicPlus®.

PUBLIC NOTICE	
Nassau County Board of Ethics Meeting	
Date:	Tuesday, July 24th, 2018
Time:	8:00 A.M.
Location:	One West Street, 2nd Floor Mineola, NY 11501
Topics:	Public Session Executive Session

Relevant information not included on the Nassau County Board of Ethics website included the following:

- *Instructions for filing an ethics complaint.*
- *Board Meeting Minutes.*
- *Board of Ethics Members and Biographies.*
- *Contact Email for the Board of Ethics.*
- *Annual Report (which often includes status of current investigations and results of investigations).*
- *Agenda for Board of Ethics Public Meetings.*
- *Prior Board of Ethics Meeting Dates.*
- *Rendered advisory opinions.*
- *Instructional or educational resources other than the Ethics Law and the Code of Ethics Booklet.*

Findings and Recommendations

The Auditors examined thirteen different Board of Ethics **websites on July 5, 2018** and charted details on nine of the websites as seen in Exhibit III.

Exhibit III - July 2018

Type of Website Data	Counties							NYC	NYS
	Nassau	Suffolk	Erie	Orange	Westchester	Rockland	Albany	NY City	NY State
Description/Introduction	✓	✓	✓	✓		✓	✓	✓	✓
Board Members Names Posted		✓	✓	✓		✓	✓	✓	✓
Board Member Bio		✓						✓	✓
Board Meeting Dates	✓	✓	✓	✓			✓	✓	✓
Board Meeting Minutes		✓	✓	✓			✓	✓	✓
Board Meeting Agenda		✓	✓	✓			✓		✓
Code of Ethics (1)	✓	✓		✓		✓	✓	✓	✓
Board of Ethics Rules		✓	✓				✓	✓	✓
Instructions to File an Ethics Complaint		✓		✓		✓	✓	✓	✓
Complaint Form		✓					✓	✓	✓
Advisory Opinions		✓						✓	✓
Audio/Video of Public Meeting			✓					✓	✓
Financial Disclosure - Instructions	✓	✓		✓		✓	✓	✓	✓
Financial Disclosure - Law		✓		✓				✓	✓
Annual Report		✓	✓	✓				✓	✓
Email Address		✓	✓	✓		✓		✓	✓
Contact Phone Number	✓	✓		✓			✓	✓	✓
Street Address	✓	✓	✓	✓		✓	✓	✓	✓
Enforcement Case Summaries								✓	✓
Newsletter		✓						✓	✓
Rating by Points	30	90	50	65	0	35	60	95	100

Sources: Selected State and Local Municipality Board of Ethics Websites comparable to Nassau County in June/July 2018.
 (1) Some websites refer to the 'Code of Ethics' as the 'Conflict of Interest Law'.

Each data element on the left hand of the chart is an important element for an informative and transparent Board of Ethics website. The Auditors conducted a scoring system of assigning five points per each information point found on each respective Board of Ethics webpage.

There are 20 data points in total, thus creating a maximum score of 100 points. Based on this information the three best Board of Ethics websites were:

- New York State;
- New York City; and
- Suffolk County

Nassau County's website is ranked 2nd lowest with only Westchester scoring lower.

Findings and Recommendations

The Auditors revisited the websites of the nine Board of Ethics websites on October 3, 2018 and noted the following:

- The Westchester Board of Ethics created a website;
- Erie County added the Financial Disclosure Law; and
- Nassau County added the updated Code of Ethics, the Board rules and the Financial Disclosure Law.

Exhibit IV below indicates changes noted to the Ethics websites reviewed in October of 2018. The Auditors note that the Nassau County Counsel to the Board of Ethics is also the consultant for the Board of Ethics in Westchester.

Exhibit IV- October 2018

Type of Website Data	Counties							NYC	NYS
	Nassau	Suffolk	Erie	Orange	Westchester	Rockland	Albany	NY City	NY State
Description/Introduction	✓	✓	✓	✓	*	✓	✓	✓	✓
Board Members Names Posted		✓	✓	✓	*	✓	✓	✓	✓
Board Member Bio		✓						✓	✓
Board Meeting Dates	✓	✓	✓	✓			✓	✓	✓
Board Meeting Minutes		✓	✓	✓	*		✓	✓	✓
Board Meeting Agenda		✓	✓	✓	*		✓		✓
Code of Ethics (1)	✓	✓		✓	*	✓	✓	✓	✓
Board of Ethics Rules	*	✓	✓		*		✓	✓	✓
Instructions to File an Ethics Complaint		✓		✓		✓	✓	✓	✓
Complaint Form		✓					✓	✓	✓
Advisory Opinions		✓						✓	✓
Audio/Video of Public Meeting			✓					✓	✓
Financial Disclosure - Instructions	✓	✓		✓		✓	✓	✓	✓
Financial Disclosure - Law	*	✓	*	✓	*			✓	✓
Annual Report		✓	✓	✓				✓	✓
Email Address		✓	✓	✓	*	✓		✓	✓
Contact Phone Number	✓	✓		✓			✓	✓	✓
Street Address	✓	✓	✓	✓		✓	✓	✓	✓
Enforcement Case Summaries								✓	✓
Newsletter		✓						✓	✓
Rating by Points	40	90	55	65	40	35	60	95	100

Sources: Selected State and Local Municipality Board of Ethics Websites comparable to Nassau County in October 2018.

(1) Some websites refer to the 'Code of Ethics' as the 'Conflict of Interest Law'.

(*) Added to the Website since July 2018

Findings and Recommendations

Audit Recommendation:

We recommend the Nassau County Board of Ethics immediately work on improving their website to make it more informative for County Officers, employees, vendors and taxpayers aspiring to be as informative as New York State, New York City and Suffolk County. An informative and easy to navigate website will provide an important resource for the public to keep a check on government operations.

AUDIT FINDING (3)

(3) Information and Forms Needed to File a Complaint or Violation were Not Made Accessible by the Nassau County Board of Ethics

As of October 3, 2018, the Nassau County Ethics webpage does not contain instructions to file a complaint nor an actual complaint form. This does not comply with the Nassau County Code of Ethics updated as of 2017, which states:

“The Board shall include a webpage on the Official Website of Nassau County containing guidance documents, web based instructional and educational resources and any forms necessary to seek advisory opinions or to file an ethics complaint.”²⁵

The webpage does not list an email contact, and only has a phone number. It has a “FOIL Request Form”, “Contact us” and a “Contact form” listed but neither of these forms mention anything about this being the actual procedure to file a complaint. It allows one to input comments without interaction and requires the person seeking information to leave their full address, phone number and email. **There is no guidance on how to file a complaint, leaving employees unaware of how an actual complaint is to be filed.**

Other Board of Ethics webpages have both a complaint form procedure and an actual complaint form to be filled out, with easy-to-follow navigation for employees.

²⁵ Section 2218 – The Nassau County Government Law – Code of Ethics. 10.c.

Findings and Recommendations

Exhibit V

Nassau County's Contact Form



The screenshot displays the Nassau County website's contact form for the Board of Ethics. At the top left is the Nassau County seal, followed by the text "NASSAU COUNTY LONG ISLAND, NEW YORK". A search bar is located at the top right. A navigation menu includes links for GOVERNMENT, DEPARTMENTS, RESIDENTS, VISIT NASSAU, BUSINESS, E-SERVICES, and NASSAU A-Z. On the left side, a blue sidebar contains links for "Board of Ethics Home", "Contact Form", and "FOIL Requests". The main content area is titled "Board of Ethics" and contains the following form fields: "First Name:" and "Last Name:" (two input boxes), "Address 1:" (one input box), "Address 2:" (one input box), "City:", "State:", and "Zip:" (three input boxes), "Phone:" and "Email:" (two input boxes), "Comments:" (a large text area), and "Security Question: What is 2+2?" (one input box). A blue "Submit" button is positioned below the security question field. The footer contains a row of links: Home, Accessibility, Browser Support, Copyright Notices, Disclaimer, Employment, Privacy Policy, Site Map, and Contact us, with the Nassau County seal centered between "Disclaimer" and "Employment".

Findings and Recommendations

Exhibit VI

Suffolk County's Complaint Form

FOR OFFICE USE ONLY:

COMPLAINT NUMBER: _____ DATE RECEIVED: _____

EBCF-2013
2 Page Form



SUFFOLK COUNTY BOARD OF ETHICS

Mailing: 335 Yaphank Avenue, Yaphank, New York 11980 • Office 631.854.0022 • Fax 631.854.0028

Ethics Violation Complaint Form

Complainant's Information

Your Name: _____

Phone Number: _____

Fax Number: _____

Mailing Address: _____

FOR OFFICE USE ONLY

(STAMP RECEIVED)

Alleged Violation

Who is the complaint against? : _____

What is your association or affiliation to the person (s) you are filing a complaint against? : _____

How is this person associated to Suffolk County?

"X" Box that applies (Required) : COUNTY EMPLOYEE ELECTED OFFICIAL

BOARD/COMMITTEE/COMMISSION/COUNCIL MEMBER

Date and Time Alleged Violation Occurred: _____

Location and Address: _____

Findings and Recommendations

Audit Recommendations:

We recommend that the Nassau County Board of Ethics create a written procedures document to be displayed on the public webpage with guidance on how to submit a complaint or violation, as well as an actual complaint form in order to facilitate the filing of a complaint.

AUDIT FINDING (4)

(4) The Nassau County Code of Ethics is Not Posted or Promoted in County Buildings or Key County Locations for Officers, Employees and Vendors

The Nassau County's Board of Ethics mission statement (per the webpage) reads as "The Board's primary goal is to assist County officers and employees in avoiding ethical missteps before they occur." However, **the Code of Ethics is not posted in County locations for employees and vendors.** Little is done to remind Nassau County employees or officers of these ethical laws and guidelines. At meetings of the Nassau County Board of Ethics attended by the Auditors, the **Counsel to the Board routinely stated the primary mission is education.**

The Auditors noted other comparable Boards of Ethics promote the Code of Ethics through posters or pamphlets which are distributed throughout all County departments and conspicuously posted where employees walk by it each day of work. Posters and Promotional pamphlets provide additional training where an employee can notice the poster and then visit the website referenced to learn more about that poster's topic. **Some of the posters include, but are not limited to, Gifts, Conflicts of Interest, Penalties for Violations, Advisory Opinions & Financial Disclosures.** (See the following examples found on the next several pages).

According to New York State General Municipal Law Section 807 "The chief executive officer of each municipality shall cause a copy of sections eight hundred through eight hundred nine of this article to be kept posted in each public building under the jurisdiction of his or her municipality in a place conspicuous to its officers and employees." The Auditors visited several County departments and noted this was not displayed in any building or department. It is important to promote the ethics laws as much as possible as County employees may not be aware of the ethics laws or the procedures of how each law should be handled. Below are some examples of the posters currently posted in Suffolk County:

Exhibit VII Suffolk County Ethics Posters

No Gifts from Lobbyists



§77-3 (G) Prohibited Conduct

No public servant shall solicit, accept or receive any gift or gratuity from a lobbyist. Penalties can be fines up to \$10,000 and a misdemeanor.

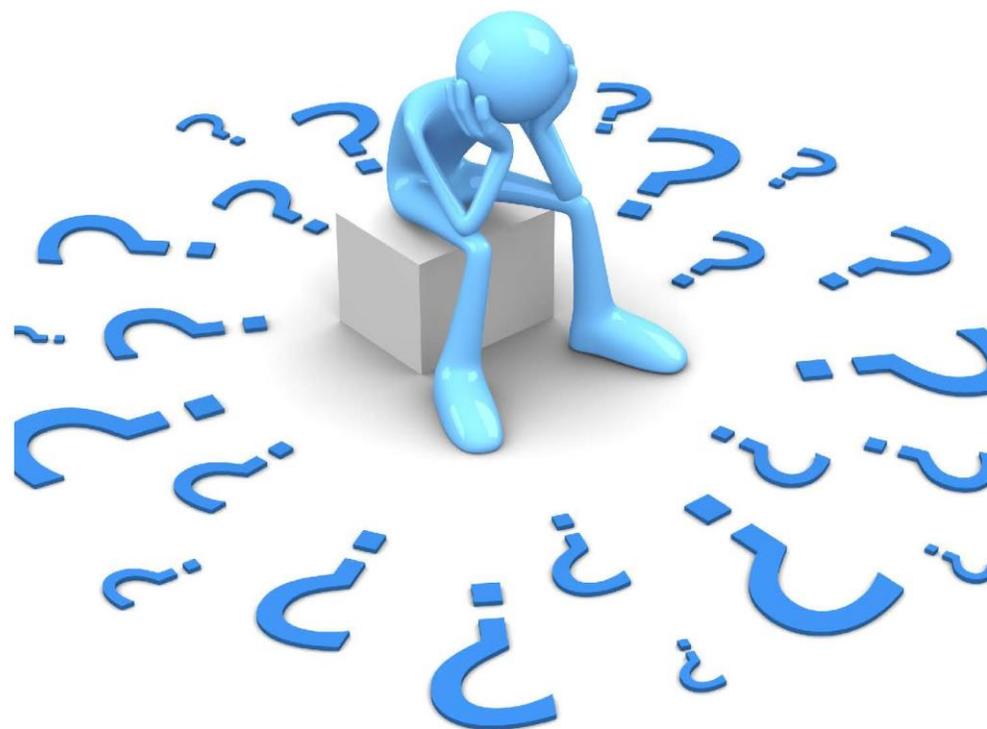
For more information on the ethics laws regarding prohibited conduct please contact the Suffolk County Board of Ethics or visit our webpage.



Suffolk County Board of Ethics
Location: Sunrise Business Center, 3500 Sunrise Highway, Great River
Mailing: 335 Yaphank Avenue, Yaphank, New York 11980
Office: 631.854.0022
www.SuffolkCountyNY.Gov



Advisory Opinions



ETHICS

Advisory Opinions

Worried about a potential conflict of interest? Do you know that the Suffolk County Board of Ethics is here to help? As a Suffolk County Government employee, you have been placed in a position of trust and are held to a high standard of ethical conduct.

For more information on the ethics laws regarding advisory opinions and conflicts of interest, please contact the Suffolk County Board of Ethics or visit our webpage.



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Office: 631.854.0022
www.SuffolkCountyNY.Gov



Prohibited Interests



ETHICS

Prohibited Interest in Government Contracts

Did you know that your family member's contract could put you in conflict with the Suffolk County ethics laws? As a Suffolk County Government employee, you have been placed in a position of trust and are held to a high standard of ethical conduct.

For more information on the ethics laws regarding prohibited interests please contact the Suffolk County Board of Ethics or visit our webpage.



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Location: Sunrise Business Center, 3500 Sunrise Highway, Great River
Mailing: 335 Yaphank Avenue, Yaphank, New York 11980
Office: 631.854.0022
www.SuffolkCountyNY.Gov



Educate Yourself

\$10,000.00

**...is how much you could be fined
for violating the County ethics laws.**

ETHICS Penalties for Offenses

As a Suffolk County Government employee, you have been placed in a position of trust and are held to a high standard of ethical conduct.

For more information on the ethics laws please contact the Suffolk County Board of Ethics or visit our webpage.



Suffolk County Board of Ethics
Location: Sunrise Business Center, 3500 Sunrise Highway, Great River
Mailing: 335 Yaphank Avenue, Yaphank, New York 11980
Office: 631.854.0022
www.SuffolkCountyNY.Gov



Findings and Recommendations

Auditors visited several Nassau County Departments and noted the Code of Ethics, the website, or contact number to obtain advice on ethics laws were not posted.

Audit Recommendations:

We recommend that the Board of Ethics ensure officers, employees and vendors are knowledgeable in the Ethics Laws and have easy access to obtain additional information by:

- a) Displaying the code of ethics in all County Departments in both employee and public areas; and
- b) Adapting or creating posters, which include information on the prohibition of the hiring or supervision or relatives (nepotism) or using other methods to convey the Ethics Laws to the employees and vendors of Nassau County.

AUDIT FINDING (5)

(5) The Board of Ethics has Operated with Less Than the Required Five Members and Consistently Lacked Diversity

The Nassau County Board of Ethics has not acted in full capacity of five members from May 2013 through August 2018.

A Board Member resigned in May of 2013. According to a news article,²⁶ this was due to a disagreement he had regarding the process the Board took in a particular investigation.

The Code of Ethics as of July 2017 states “Any vacancy occurring on the Board other than expiration of a term shall be filled by nomination of the successor within sixty (60) days of the creation of the vacancy.” Another Board Member resigned in May 2017, the Board consisted of three members from July 2017-December 2017.

In 2017 under Local Law No. 6-2017, the Board of Ethics shall consist of five members, four (4) of whom shall be appointed by the County Executive, subject to confirmation of the County Legislature, all of whom shall reside in the County and who shall serve without compensation.

In 2017, for several months, the Board was in violation of Local Law No. 4-2007 and the updated Local Law No. 6-2017:

- Local Law No. 4-2007; which was in effect in 2007 through July 10, 2017 states “A majority of such members shall not be officers or employees of the County or any municipality.” From May 2017 through July 2017, two of the three members of the Board were County employees.
- The Board was in violation of Local Law No. 6-2017 from July 2017-December 2017, as two Board members were involved in political parties; as well as one Board member being

²⁶ The Island Now – No Sanctions from Nassau Board of Ethics in Nearly 5 Years, September 20, 2017.

Findings and Recommendations

a public employee for Nassau County, which is prohibited under the updated Local Law.

²⁷

As of August of 2018, the Board is operating with the statutory required membership of five board members. The Board of Ethics not acting in full capacity for over five years certainly impacts the decision-making process related to the Boards Advisory Opinion requests and responses as well as complaints filed. The Nassau County's Board of Ethics should always consist of five members as stated in the Code of Ethics and have five member input.

The Auditors noted that the Nassau County Board of Ethics has been entirely male and composed of only attorneys.

According to United States Census²⁸ as of 2017, the total population of Nassau County is 1.4 million people. 51.4% of this population is female and 48.6% is male.²⁹

Per the worldwide "Organization for Economic Cooperation and Development" OECD³⁰, "Gender diversity in public institutions is particularly crucial, given these decision-making bodies create the rules that affect people's rights, behaviors and life choices."

In addition, **Nassau's Board has only consisted of attorneys and has had no other occupational backgrounds.** The Board should reflect the diversity of the County and the County workforce it serves. Nassau's Board of Ethics lack of diversity could ultimately impact the decisions being made by the Board. The Board also pays outside legal counsel for legal advice and assistance. The Chairman of another very active Board of Ethics informed Auditors that the "majority of advisory requests or complaints are not complex in terms of legal purposes."

Other Boards the Auditors looked at have members from diverse backgrounds such as retired government workers, clergy, teachers and employees from the medical field.

Audit Recommendations:

We recommend on an ongoing basis:

- a) The Board/Legislature/County Executive ensure the full membership of five Board of Ethics Members is maintained by appointing new member(s) within sixty (60) days, as it states in the Code of Ethics; and
- b) The Board/Legislature/County Executive look for diversity in gender and occupational background for Board selection.

²⁷ Local Law No. 6-2017 Section 10.a.i. – "With the exception of the County Attorney, no person, while serving as a member of the Board shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, have business dealings with the County or any elected official, hold any political part office appear as a lobbyist before the County or make a contribution to any County Elected official or candidate for County office."

²⁸ <https://www.census.gov>.

²⁹ <https://census.gov/quickfacts/fact/table/nassaucountynewyork/LND110210>.

³⁰ <http://www.oecd.org/gov/women-in-government.htm>/Organization for Economic Cooperation and Development, OECD, is in 36 countries, headquartered in France, with a mission to promote policies that will improve the economic and personal well-being of people around the world.

Findings and Recommendations

AUDIT FINDING (6)

(6) The Board did not Conduct Any Investigations or Impose Any Sanctions During the Period 2016 Through July 2018.

From January 2016 through July 2018, the Board Minutes reflect that there has been little activity by the Board of Ethics.

Upon request by the Auditors for records of results of investigations, sanctions or penalties imposed by the Board for violations of the County's Code of Ethics for the audit period, the Counsel of the Board replied, "**The Board of Ethics conducted no investigations, and imposed no sanctions or penalties for violations of the County's Code of Ethics for the period January 1, 2016 though the present date.**"

This statement contradicts an article posted by The Island Now on September 20, 2017 when one of the Board members was questioned on the number of complaints the Board receives and the member responded stating they receive "5 or fewer each year."

When the Auditors asked the Board for a log of complaints the Board received in the last several years, the Counsel responded stating, "**The Board of Ethics has not received any complaints during the audit period that warranted an investigation, and thus has not maintained a log of complaints.**"

Despite the statement of no complaints, a number of highly visible corruption allegations had been made during the time period reviewed, and various news stories reported complaints were submitted:

- "*Nassau ethics board rebuffs District Attorney's Request.*" The complaint was filed in late 2017. The article noted that the Board rebuffed a request submitted by the District Attorney. The District Attorney's spokesman was quoted as stating the Board "has ignored repeated calls to take action to stop politicians from wasting millions of taxpayer dollars on self-promotional political mailings."³¹
- "Democratic Chairman files Nassau ethics complaint against former Comptroller for hiring relatives." The complaint was filed on June 9, 2017. The then County Attorney responded within the article stating the Board would review this letter.³²

Per the Counsel's response, there were no investigations of complaints during the last 2 ½ years.

The same Counsel to the Nassau Board of Ethics is the Counsel to Oyster Bay's Town Ethics Board. In a 2018 news article³³, it was noted that the Town of Oyster Bay did not investigate

³¹ <https://newsday.com/long-island/politics/nassau-ethics-board-rebuffs-madeline-singas-request-1.14635357>, 10/26/2017

³² <https://www.newsday.com/long-island/politics/jay-jacobs-files-nassau-ethics-complaint-against-george-maragos-1.13716098>, 6/9/2017

³³ <https://www.newsday.com/long-island/nassau/oyster-bay-ethics-board-1.18438037>, 5/7/18

Findings and Recommendations

claims. A former Oyster Bay Ethics Board member is reported as saying the Ethics Board under the Counsel's direction, had incorrectly responded to some ethics complaints with letters that said the board wasn't authorized to investigate the claims. They also stated: "The lawyer was trying to tamp down any efforts for us to do our job, to conduct an investigation."

The Auditors noted that the Board in 2018 has become more engaged than it has been in the past. The new Board members have discussed updating the Board of Ethics webpage to contain more information including a complaint form, transitioning the financial disclosures to be submitted electronically in the future, and expanding ethical training to more departments and employees.

Audit Recommendations:

We recommend that:

- a) the Board actively conduct investigations and consider the imposition of sanctions when appropriate;
- b) the Board provide advisory opinions when a County officer or employee, or former officer or employee requests advice regarding ethical issues relative to themselves or to the head of a County agency, the County Executive or a County Legislator;
- c) Section 2218 (10)(d) of the County Charter be amended to clarify the Board's authority to, and mandate that, the Board provide advisory opinions concerning the Code of Ethics to county department heads and elected officials regardless of whether or not such advice is related to himself or herself;
- d) the Board maintain logs of all complaints received; and
- e) the Board minutes 'open to the public' present more information to show transparency of the Board's activities.

AUDIT FINDING (7)

(7) The Board of Ethics Would Not Allow Auditors to View Any Nassau County Advisory Opinions

Board of Ethics usually welcome employees, officers and any parties subject to the Code of Ethics to request an advisory opinion from the Board of Ethics, seeking to assist County Officers and employees in avoiding ethical missteps before they happen. These requests deal with proposed future conduct or action by a public servant.

After investigation, discussion, and legal review, the Board then puts forward a formal advisory opinion. Advisory opinions are kept confidential as to who requested it and usually are redacted and posted on the associated Board of Ethics' website to educate and offer answers to questions for others.

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Appendix E has an Advisory Opinion example from the website of both:

- **The New York State Ethics Joint Commission on Public Ethics (their website has years of advisory opinions searchable by topic); and**
- **An Advisory Opinion from a nearby County.**

As the Nassau County Board of Ethics does not have any Advisory Opinions on their website, the Auditors requested a log of advisory opinions from the Nassau Board of Ethics. **The Counsel responded by objecting to this request.** (The Auditors had previously advised the Counsel and County Attorney at the Audit Entrance Meeting that documents requested could be presented with redacted information to maintain confidentiality, if the Board did not feel they should provide certain confidential information.)

The Auditors also asked if the Board assigned a reference number to the referrals, cases or complaints they received. **The Counsel to the Board replied that they assign a reference number to advisory opinions; however, the Counsel to the Board objected to presenting this list to the Auditors.** It is unclear why the Counsel and the Board would not supply a log listing the number of advisory opinion requests received or issued from January 1, 2016 through present, as a log consisting of the reference numbers should not contain any personal information.

Nassau County Local Law No. 6-2017 states:

“All such advisory opinions issued by the Board either prior to or subsequent to the effective date of this local law may be issued with the names and other identifying information redacted and such advisory opinions issued with appropriate redactions shall be made available to the public to the extent the Board determines that identities can be meaningfully protected.”

Exhibit VIII below is an example of another County’s website showing the log numbers and the public’s opportunity to read example redacted advisory opinions requested by employees, officers and vendors to the Board. Again, the posting of redacted advisory opinions’ purpose is to educate employees and help answer common ethical questions without even having to write to the Board.

Findings and Recommendations

Exhibit VIII - Suffolk County Board of Ethics Webpage

Advisory Opinions 2018		
Rendered Advisory Opinions 2018		
AO Number	Section of Law	Subject Matter
AO-2018-1	§77-1, §77-3(C), §77-7	Definitions, misuse of official office/position, recusal and disclosure.
AO-2018-3	§77-1, §77-3(B), §77-3(C)	Definitions, conflict of proper discharge of duties, misuse of official office/position.
AO-2018-4	§77-2(A), §77-3(B), §77-3(C), §77-3(D)	Prohibited interests in firms doing business with the County, conflict of proper discharge of duties, misuse of official office/position, confidential information.
AO-2018-6	§77-3(B), §77-3(C)	Conflict of proper discharge of duties, misuse of official office/position.
AO-2018-7	§77-5(G)	Complimentary ticket to charitable event.
AO-2018-8	§77-5(B)	Accepting or receiving any County benefit available generally.
AO-2018-9	§77-3(B), §77-3(C)	Conflict of proper discharge of duties, misuse of official office/position.

Audit Recommendations:

The Nassau County Board of Ethics should:

- a) post redacted advisory opinions on their website to help guide County officials and employees on ethical questions they may have, to assist in preventing ethical missteps before they happen; and
- b) post these opinions in an indexed, searchable manner.

AUDIT FINDING (8)

(8) The Lack of an Annual Report Denies Employees and Residents the Ability to Evaluate the Board's Roles and Responsibilities

The Code of Ethics did not require the preparation of an Annual Report by the Board until the amendment of Local Law No. 6 – 2017 passed by the Legislature in July 2017. Per the amendment, the Board is to submit a report to the County Executive and the County Legislature no later than March 1 each year, summarizing the activities of the Board during the preceding calendar year.

Although an Annual Report has not been required per the Code of Ethics, the Board of Ethics is not communicating effectively with the employees and residents of Nassau County as to what they have done, what training is available, what resource documents are available and what advice or education the Board would like to convey to the public.

Findings and Recommendations

With a useful and effective annual report, the reader should be able to form a view on the performance of the local authority and whether it is doing well and providing value for money. A local authority inspires confidence and trust when it clearly demonstrates that it knows its own business, is consistently performing well, delivers value for money, and is transparent about any changes it needs to make and what it can do better.³⁴

A 2010 Report of the New York City Bar Association Committee on State Affairs and Committee on Government Ethics stated that a reasonable option for oversight would include the ethics agency being “mandated to provide a periodic report of its activities to the public and the Legislature.”³⁵

A comparable county with a similar population to Nassau County has Annual Reports posted on their website dating back to 2012. Some of the information provided in their Annual Report is as follows:

- Members and Staff of the Board of Ethics;
- Budget;
- Independent General Counsel and County Law Department;
- Training and Education;
- Board Policies, Code Review and Adopted Legislation;
- Investigations/Fines/Referrals;
- Advisory Opinion Requests and Complaints;
- Freedom of Information Law;
- Elected Official’s Sworn Statements;
- Information Technology; and
- Initiatives for next year.

As seen in Exhibit III in Finding (2), Annual Reports are prepared by other counties located in New York, including Suffolk, Erie & Orange Counties. New York State has Annual Reports on their website dating back to 2012³⁶ and New York City has annual reports on their website dating back to 1990.³⁷

Audit Recommendations:

We recommend that:

- a) the Board give priority to preparing its 2017 Annual Report;
- b) annual reports be available to the employees and residents; and
- c) annual reports be posted on the Nassau County Board of Ethics website.

³⁴ “The Purpose of Annual Reports” – Comptroller and Auditor General New Zealand.

³⁵ NYC Bar, Reforming NYS’s Ethics Laws the Right Way, February 2010.

³⁶ NYS website, <https://jcope.ny.gov/reports-and-publications>.

³⁷ NYC website, <https://www1.nyc.gov/site/coib/public-documents/public-documents>.

Findings and Recommendations

AUDIT FINDING (9)

(9) Most County Employees Have Not Received the Updated Code of Ethics and Formal Ethics Training

Many County employees have not received a copy of the current, updated Nassau County Code of Ethics. The County's Office of Human Resources provided the Auditors with the "new hire" package that is used by Departmental Human Resources representatives when new employees are brought on board. The package includes a copy of the 2009 County's Code of Ethics Booklet, which contains the text of the Nassau County Code of Ethics and a plain language guide to government ethics. Although **the Code of Ethics was revised in 2017³⁸, many long-term County employees last received an updated version of the Code of Ethics in 2009.**

Significant changes implemented to the Code of Ethics in 2017 included:

- Where a County officer or employee has an interest in any existing or proposed legislation, contract, purchase agreement, lease agreement, use and occupancy agreement, or other agreement with the County, the officer or employee should disclose the nature and extent of that interest in writing to their immediate supervisor and to the Board of Ethics as soon as they have knowledge of the actual or prospective interest.
- Several material changes to the Code related to the Board of Ethics itself were made. For example, with the exception of the County Attorney, no member of the Board shall hold any public office, seek election to public office, be a public employee in any jurisdiction, have business dealings with the County or any elected official, hold any political party office, appear as a lobbyist before the County or make a contribution to any County elected official or candidate for County office.
- The Board of Ethics shall develop written guidelines as to the procedures it shall follow in the investigation and determination of a complaint. Such guidelines shall be included in their webpage. As of September 2018, this information has been posted on the Board's webpage.³⁹

The 2009 hard copy of the Code of Ethics booklet issued to new employees was noted to be in poor condition by Departmental Human Resources Representatives, due to repeated photocopying of the document.

Under the Code of Ethics, the Board has the responsibility of informing County officers and employees and assisting their understanding of conflicts of interest requirements and will provide ethics training, guidance documents, seminars and education to Nassau County's employees, departments, boards and commissions.⁴⁰ The Board noted during their June - August 2018 Public

³⁸ The Nassau County Code of Ethics is contained in Section 2218 of the Nassau County Charter, as amended by Local Law No. 4-2007 and Local Law No. 6-2017.

³⁹ Nassau County Board of Ethics, Rules of Procedure for Adjudicatory Proceedings and Appeals Relating to Assessment of Civil Penalties.

⁴⁰ Nassau County Code of Ethics, Section 2218 of the Nassau County Charter as Amended by Local Law No. 4-2007 and Local Law No. 6-2017.

Findings and Recommendations

Meetings that individuals receiving ethics training included Elected Officials, Deputy County Executives, County Legislators, Department Heads and deputy Department Heads, departmental attorneys, and employees in the Office of the County Attorney and Office of the County Executive. **They noted that some of the individuals had been unable to attend the training sessions offered, which was verified by the Auditors when they reviewed the lists of those who had attended the ethics training offered in 2017 and 2018.**

The Counsel to the Board, at the public portion of the Board of Ethics meeting on June 29, 2018, was quoted as saying, “there is a direct correlation to the education of the County employee and the number of complaints filed.”

At this time, ethics training is not offered to all County employees. Since the Code of Ethics applies to all County employees, a formal training program could help them perform their duties while avoiding unethical conduct. Guidance on the disclosure of second jobs, avoiding the misuse of County resources (i.e., supplies and equipment), acceptance of gifts and favors, and post-employment restrictions would assist in ensuring that all employees avoid even the appearance of a conflict of interest and disclose such conflicts in a timely manner.

Auditors note another municipality provides a free Ethics Program Seminar featuring the county’s Counsel to the Board, free on the Town website⁴¹, while Nassau’s in person training program is billed by the Counsel to the Board.

Audit Recommendations:

We recommend that the Board of Ethics:

- a) Work with the Office of Human Resources and the Bureau of Printing and Graphics to ensure that all County employees receive a copy of the updated Code of Ethics Booklet and/or a link to it on the Board of Ethics’ website.
- b) Provide ethics training to the officials, attorneys, and department heads who were unable to attend previous sessions.
- c) Consider rolling out ethics training to all County employees. (The Auditors note that the training documents provided by the Counsel to the Board of Ethics, who presents the training and has extensive training expertise, were comprehensive and well written.)

AUDIT FINDING (10)

(10) Emails to the Board of Ethics Were Read by Individuals Not Then Associated With the Board

An Engagement Letter and Field Audit Protocol document were sent to the Board of Ethics on July 10, 2018. The Engagement Letter was addressed to the Board Chairman. The documents were sent by email to the Board of Ethics' email address.

⁴¹ Town of Putnam Valley, <https://www.putnamvalley.com/board-of-ethics/>

Findings and Recommendations

The Auditors noted that in addition to the individuals who were copied on the email, which included the County Attorney (a member of the Board of Ethics), the County Executive, and the Chief Deputy County Executive, the following recipients read the email⁴²:

- a Deputy County Attorney for contracts; and
- an assistant in the Office of the County Executive.

These individuals are not members of the Board of Ethics. In the case of the Deputy County Attorney for contracts, access to the Board's emails may allow this individual to view information which could pose a potential for conflicts of interest due to the responsibilities relating to contracts. The Board of Ethics has a Secretary at the Office of the County Attorney, who was not identified as a recipient of the email.

The Auditors asked the Office of Information Technology (“IT”) if they could identify the individuals with access to the Board of Ethics emails. IT declined to respond, instead referring the query to the County Attorney. The Auditors noted that it has been a practice of IT to provide new employees with the same access to Outlook as that granted to the prior individual in their position.

The Auditors approached the new Nassau County Attorney with this question and were told that these contacts were on the email from the last administration. The County Attorney was not aware that these individuals were receiving Board of Ethics emails nor was he aware of the reasoning for them being on the Board of Ethics’ email group. He stated that these contacts were removed from the Board of Ethics email once this was discovered.

At the request of the Counsel to the Board of Ethics, Auditors submitted written questions to the Board of Ethics, including inquiring who presently has access to emails addressed to the Board of Ethics, and who in the past five years has had access to emails addressed to the Board of Ethics. **The Counsel responded that that the Board of Ethics objected to both questions, stating that internal communications among the Board of Ethics and its staff were beyond the scope of the audit as described in the Engagement Letter.**

Audit Recommendation:

To avoid the appearance of conflicts of interest and safeguard the confidentiality of individuals who wish to communicate with them, we recommend the Board of Ethics obtain assistance from IT to limit access to their emails at their Nassau County email address to Board Members and the Board's Secretary.

⁴² Microsoft Outlook Read Receipt dated July 10, 2018 for email sent to the Board of Ethics advising of upcoming audit, with Engagement Letter and Field Audit Department Protocol as attachments.

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AUDIT FINDING (11)

(11) The Board of Ethics did not Receive 100% Compliance with the Filing of 2017 Financial Disclosure Forms and Did Not Impose Fines on those Who Failed to Comply

The Counsel to the Board of Ethics indicated at the audit entrance conference that Annual Statements for Financial Disclosure forms are received at 100% compliance each year. However, the review of the Master List performed by the Auditors indicated this was not the case and that the Board of Ethics is not achieving 100% compliance with the filing of Financial Disclosure Forms as stated at the audit entrance meeting. Section 22-4.3 of the Nassau County Administrative Code clearly sets forth certain titles of officers and employees required to file annual Financial Disclosure forms. Employees may request an exemption from this requirement.

The Financial Disclosure forms include significant information about employees' and their family members' financial interests, outside employment and volunteer positions, investments, gifts and honoraria, debts, interests in contracts, and political party positions.

Disclosure of this information by County officials, employees, and board and commission members and their family members is needed for the County to identify potential conflicts of interest. Noted in the Nassau County Local Law No. 6-2017, the Financial Disclosure forms are due on or before the fifteenth day of May for the preceding calendar year.

The Board's "Master List" of individuals required to file for 2017 listed 718 individuals. **Auditor testing revealed 96 employees required to file annual disclosure forms had not done so for 2017.** The Auditors noted that some of the 96 individuals had left County service or changed job positions. In one instance, it appeared an employee was listed twice in error.

Of the 96 individuals, County personnel records⁴³ indicate that 82 are current County or Nassau Community College employees or trustees. This reflects a non-compliance percentage of approximately 11%.

It should be noted that at the November 14, 2018 Board of Ethics meetings, Auditors in attendance (as the public) observed the Board Secretary distributing a financial disclosure form submission information list to Board members. The Secretary stated that there were still 72 outstanding financial disclosure forms for 2017.

Audit Recommendations:

We recommend that the Board of Ethics:

- a) Review the employment/job status of each individual/employee who did not file their 2017 Financial Disclosure Form; and

⁴³ Per NUHRS, the County's personnel and payroll system.

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- b) For those employees who are required to file, follow-up with Department Heads/HR Reps to ensure that the forms are submitted. If the forms are not submitted after the follow-up, consider imposing appropriate penalties.

AUDIT FINDING (12)

(12) The Prior Board of Ethics Was Not Fully Reviewing Financial Disclosure Forms and Needs an Electronic System to Cross-Reference County Employees with County Vendors

Approximately 700 officials and employees submit an annual Financial Disclosure Form to the Board of Ethics pursuant to the Code of Ethics, Section 2218 of the Nassau County Charter. The Board of Ethics and their Counsel have advised the Auditors that the review of the Financial Disclosure Forms is primarily a manual process at this time. When received, each manual form is logged in and skimmed through to ensure that it is fully completed and signed. Potential conflicts of interest identified on the forms are investigated and reviewed.

To ensure that conflicts of interest and inappropriate gifts or favors do not occur, the Code of Ethics requires that elected officials, candidates for County elected office, and designated officers and employees with policymaking positions, file an annual Financial Disclosure Statement with the Board of Ethics. This Financial Disclosure Statement is a record containing financial and professional information about the filer and their spouse and dependent children for a calendar year for the purpose of avoiding potential conflicts of interest with the County.

One notable requirement on the Financial Disclosure Statement is the listing of **‘any interests in County Contracts, or in any village, town or municipality located in the County, or any village, town or municipality located within the County of the preparer, their spouse or dependent children’**. All other required information can be found on the Financial Disclosure Form in Appendix (B).

The Comptroller’s Office’s Fiscal Officer informed the Auditors that the County has approximately one thousand active vendors and approximately nine thousand inactive vendors listed in their vendor file. The Board of Ethics would have had to manually make a comparison for 700 or more employees, of a 5 page paper disclosure form, to the vendors list. Even if restricted to just the active contract vendors list, the Board would have to manually cross-reference about 700,000 different possible links between employees and vendors. There are seven or more categories that the Board should have been reviewing such as political interests, gifts, third party reimbursements etc.

With the current manual system, the Board is unable to fully review each filer’s relationships with County contractors and vendors for potential conflicts of interest, due to the time, effort and staff resources needed to accomplish this task.

Further, manual review of financial disclosure forms is very labor intensive. In a voucher billed to Nassau County for services rendered in September 2016, the Board of Ethic’s Counsel invoiced eight hours for the review of the financial disclosure forms. In the minutes that reflect the hours invoiced it states: “Counsel *and an associate from his law firm* have been reviewing random

Findings and Recommendations

samplings of the 2015 Financial Disclosures for both completeness, as well as any potential conflicts of interest with county vendors/contractors.”

- There were approximately 590 Financial Disclosure Forms filed in 2016.
- If the Counsel and an associate are reviewing “random samples” of these forms manually, there is a concern that only a small percentage of the forms were reviewed, *and* the Board at that time was not reviewing the forms themselves.
- This could potentially mean that forms contained conflicts of interest and were not being reviewed as they were not a part of the “random samples.” Financial disclosure forms should be reviewed in a fair and equitable manner.
- The Ethics Code does not contemplate randomly reviewing financial disclosure forms. Rather, the Code and the public have the expectation that all financial disclosure forms are fully reviewed and appropriate actions taken.

The U.S. House of Representatives Committee on Ethics, after creating an internet-based electronic filing system, “strongly recommends using the electronic filing system to complete Financial Disclosure Statements and Periodic Transaction Reports. Doing so will reduce errors and greatly simplify future filing.”⁴⁴

Potential improvements the Auditors believe the Board of Ethics should consider regarding the format of the form include the following:

- a certification statement: The form requires only a signature by the preparer, with no certification statement;
- identification of relatives that work for the County and other local municipalities;
- identification of a domestic partner. While the form requires certain information regarding the spouse of the preparer, it does not require information regarding a domestic partner, and;
- A requirement to list siblings, nondependent children and parents who could be vendors.

Audit Recommendations:

The Board of Ethics should:

- a) Work with the County Legislature, Administration, the Office of Human Resources and IT to expedite the implementation of an electronic Financial Disclosure Form and an electronic cross-reference system;
- b) Fully review all financial disclosure forms;
- c) Consider adding a certification statement to be signed by the filer, attesting to the truthfulness of their responses;

⁴⁴ <https://ethics.house.gov/forms/information-and-forms>.

Findings and Recommendations

- d) Consider expanding the requirement for financial disclosure of domestic partners and require preparer to list siblings, parents, non-dependent children on Financial Disclosure form; and
- e) Require filers to identify any relatives who work for the County and other local municipalities.

AUDIT FINDING (13)

(13) The Board of Ethics Must Develop Additional Policies and Procedures, Including Guidance for Departments with Related Employees

County law requires the Board of Ethics to provide guidance to County employees and residents.⁴⁵ The Code of Ethics states: “The Board shall include a webpage on the Official Website of Nassau County containing guidance documents, web based instructional and educational resources...” As of early October 2018, the Board of Ethics has posted the following laws, policies and procedures on their webpage:

1. Policy Maker Guidelines- Resolution 1-2018⁴⁶;
2. Code of Ethics- Local Law 6-2017;
3. Code of Ethics Booklet- A Plain Language Guide (as updated in 2017); and
4. Rules of Procedure for Adjudicatory Proceedings and Appeals relating to Assessment of Civil Penalties.⁴⁷

When the Auditors requested that the Board of Ethics provide copies of their written policies and procedures, in addition to the documents listed above, they provided their Procedures for Review of Annual Statements of Financial Disclosure. The Counsel to the Board stated “The newly constituted Board of Ethics is actively engaged in a review and codification of its policies and procedures.”

The Code of Ethics requires that no officer or employee of the County hire a relative, directly supervise a relative, or evaluate a relative’s work (nepotism).⁴⁸ As part of their ongoing review of County hiring practices and related parties, the Auditors met with several Department Heads, and Departmental Human Resources (“HR”) representatives. The Auditors inquired if the officials and HR staff were aware of any employees who had relatives also working in their department. Several of the officials and HR staff members indicated that they were aware of one or more employee in their department who had relatives also working there; however, those employees worked in different units or divisions and did not supervise or evaluate each other. The HR Representatives noted that this was an informal policy, and that they did not have written policies and procedures regarding relatives. **As this has been a section of the Code of Ethics for many**

⁴⁵ Local Law No. 6-2017, § 2218. Code of Ethics, Section 10.j.

⁴⁶ This Resolution provides guidelines for determining the officials and employees deemed to hold policy-making positions who must file an annual Financial Disclosure Form.

⁴⁷ The Rules of Procedure were established to ensure employees receive due process protection in Board of Ethics adjudicatory proceedings and appeals before the Board.

⁴⁸ Nassau County Charter, §2218. Code of Ethics, Section 7.

Findings and Recommendations

years, the Board should have provided a policy or procedure for County Human Resources to distribute and enforce.

Audit Recommendations:

The Board of Ethics should:

- a) Give high priority to its review and codification of its policies and procedures, adding them to its webpage if appropriate; and
- b) Work with the Office of Human Resources and the Office of Labor Relations to develop written procedures for the hiring and supervision of relatives (nepotism), which should be distributed to all County departments.

AUDIT FINDING (14)

(14) The Counsel to the Board is Involved in Many Contracts with Nassau County

Exhibit IX is a list of the Contracts Counsel has with Nassau County.

Exhibit IX

Counsel's Contracts with Nassau County				
Contract	Contract Terms	Contract Amount	Total Payments to Date	Hourly Rate
Counsel to Board of Ethics	02/01/10 to 01/31/12	\$ 100,000	\$ 92,220	<i>Hourly Rate - \$200</i>
Counsel to Board of Ethics	02/01/12 to 01/31/18	\$ 260,000	\$ 218,583	<i>Hourly Rate - \$200 through 04/30/12 & \$225 from 05/01/12 to present</i>
Case A: Hoey V. Nassau County et. al.	09/26/13 to Completion	\$ 200,000	\$ 199,910	Managing Member of the Counsel. <i>Hourly Rate of \$225</i>
Case B: Dekom et.al. V Nassau County et. al.	09/03/13 to Completion	\$ 15,000	\$ 6,080	Managing Member of the Counsel. <i>Hourly Rate - \$225</i>
Case C: Gonsalves et. al. V New York State Board of Elections et. al.	12/12/12 to Completion	\$ 25,000	\$ 8,568	Managing Member of the Counsel. <i>Hourly Rate of \$225</i>
Case D: LIBOR Litigation	07/01/12 to Completion	\$ 25,000	\$ 24,891	Managing Member of the Counsel. <i>Hourly Rate of \$225</i>
Grand Total	6 Contracts	\$ 625,000	\$ 550,253	

Note: Total Payments to Date are as of September 19, 2018.

Findings and Recommendations

As noted above in Exhibit IX, **Counsel has been contracted to the Board of Ethics since 2010. Since Counsel has been awarded this contract, it never went out to bid and the contract has been simply extended each year stating under Procurement History the following:**

“A Request for Qualification was issued and a panel established. Counsel’s firm has been selected from the panel based on the firm’s experience, expertise in the subject matter and availability (Particularly the Counsel).”

There is a clear potential for conflict of interests with the Counsel to the Board of Ethics having multiple contracts with the County. In one case, *Hoey V. Nassau County et. al.*, the Counsel is representing the Nassau County Police Department and the County from a lawsuit brought by a County employee (a police officer). If that employee had also raised concerns to the Board of Ethics, the Counsel could not in all good faith, represent both sides.

This situation also creates a chilling effect on County employees who may want to bring issues to the Board of Ethics. Employees may be aware that the Counsel is representing the County against an employee lawsuit, and then be inhibited or discouraged from bringing issues to the Board of Ethics which may result in litigation.

Contract Cases A-D are all handled through the County Attorney’s office. As noted in the background, the County Attorney is a member of the Board of Ethics. **It is not the best practice to have the Counsel of the Board of Ethics involved in other Nassau County Contracts outside of the Board of Ethics. The appearance of a conflict of interest is too strong if the Counsel of the Board of Ethics is also representing the County in various cases, and is being paid for those cases by the administration - the appearance of independence from financial reliance on any administration could be clouded by multiple county contracts.**

Another issue which is raised by the Counsel to the Board having multiple contracts is that expenditures from one contract may be charged to another contract. Upon review of paid vouchers from the Counsel, auditors found one expenditure of \$36,000 for the Hoey case paid with funds designated for the Board of Ethics contract. While the language in the current Board of Ethics contract allows the provision of general legal advice and assistance to the County Attorney, funds budgeted for Board of Ethics legal costs should be dedicated to that specific purpose.

The current Counsel’s contract with the Board of Ethics expired on January 31, 2018. According to the minutes of the January 30, 2019 Board of Ethics meeting, Board Member Devane moved to have the current counsel continue on as a special counsel to the Board, Board Member Palmeri seconded the motion and the motion carried unanimously. The January 30, 2019 Board meeting minutes are available at: <https://www.nassaucountyny.gov/DocumentCenter/View/24528>.

Audit Recommendations:

We recommend that:

- a) The Counsel to the Board of Ethics should have no other contracts with Nassau County; and
- b) The County Attorney’s Office consider updating the Counsel’s contract to eliminate the language that states Counsel “from time to time, shall provide general legal advice and

Findings and Recommendations

assistance to the Nassau County Attorney or his designee,” as the Counsel’s contract should be solely dedicated to the Board of Ethics.

AUDIT FINDING (15)

(15) The Counsel’s Representation of Both the Nassau County Board of Ethics and Various Towns & Villages Boards of Ethics in Nassau County Creates Potential Conflicts of Interest

Exhibit X is a list of all other Boards and Groups the Counsel to the Board of Ethics of Nassau County is involved in as of 7/31/2017. This includes two major towns in Nassau County, the Town of North Hempstead and the Town of Oyster Bay.

Exhibit X

	Jurisdiction	Title
1	County of Westchester	Consultant to Board of Ethics
2	Town of North Hempstead	Counsel to Board of Ethics
3	Town of Huntington	Counsel to Board of Ethics
4	Town of South Hampton	Counsel to Board of Ethics
5	Town of Oyster Bay	Counsel to Board of Ethics
6	Town of Yorktown	Counsel to Board of Ethics
7	Nassau County Bar Association	President
8	City of Mount Vernon	Special Counsel
9	Village of Muttontown	Village Attorney
10	Village of Lattington	Planning Board Member
11	Village of Manorhaven	Special Counsel
12	Village of Freeport	Special Counsel
13	Freeport Housing Authority	Special Counsel
14	Hempstead Housing Authority	Special Counsel
15	Roosevelt Public Library	Special Counsel
16	Suffolk Community College	Special Counsel
17	Hempstead Community Development Agency	Special Counsel
18	Freeport Community Development Agency	Special Counsel
19	Duck Pond Associates	Partner
20	Old Roslyn Associates	President
21	Setauket Village Market, LLP	Managing Member

Towns, Villages & Agencies Within Nassau County are Shaded

Findings and Recommendations

Representing multiple jurisdictions in the same County creates a situation where a conflict could arise. For example, an issue may present in which officials from both Nassau County and the Town of Oyster Bay face ethics violations and both Boards of Ethics would be involved.

Under New York State Law if a smaller municipality does not have its own Board of Ethics, the County Board of Ethics would provide guidance and support to them.⁴⁹

This may also present a conflict as many villages or towns enter into contractual agreements with the County for services or grants, thus, providing a risk for potential conflicts of interests.

An employee solely devoted to the Board of Ethics on a regular basis could perform daily duties, including:

- Reporting directly and being responsible for carrying out the policies of the Board of Ethics.
- Being responsible for daily management of the office, including procurement and payment, maintenance of confidential records.
- Receiving, interviewing, investigating and analyzing complaints of ethics violations and presenting recommendations to the Board to resolve ethics violations.
- Handling requests for ethics opinions from elected officials, department heads, county board members, and employees of the County, which involves receiving, investigating, researching, reporting, tracking and making recommendations to the Board.
- Developing and delivering ethics training to elected officials, department heads, county board members, and employees of the County.

Audit Recommendations:

- We recommend the Nassau County Board of Ethics consider hiring an Executive Director under Civil Service developed requirements, (see Appendix F) and not contract with outside counsel who also represents other towns and villages in Nassau County. An Executive Director can handle the duties currently performed and it will allow the Board of Ethics to have an employee solely dedicated to Nassau County's Ethics.
- We also recommend that the County Executive and Legislature consider Charter changes which:
 - a) rework the supportive structure of the Board of Ethics to be fully independent of either branch of government and not having any County employees; and
 - b) develop a revised code to include removing the County Attorney as a member and providing independent resources.

⁴⁹ The New York State General Municipal Law Section 808. Boards of Ethics.

Findings and Recommendations

AUDIT FINDING (16)

(16) Board of Ethics Contract Has Been Violated by Using an Independent Attorney not Specified in the Contract

Presented below is the description of services to be performed in the Counsel to the Board's contract with the Board of Ethics:

- The Contractor shall serve as counsel to the Nassau County Board of Ethics ("Board") and from time to time, shall provide general legal advice and assistance to the Nassau County Attorney or his designee ("County Attorney") ("Services"). In its capacity as counsel to the Board, Counsel shall provide daily counseling to all levels of employees on ethics issues and perform the following responsibilities:
 - Planning and running bi-monthly Board meetings, including gathering any necessary background information, consistent with confidentiality;
 - Writing, on behalf of the Board, formal opinions regarding all issues presented to the Board as well as letters, emails, and other informal communications informing those employees who have written to the Board with informational letters, complaints, or disclosures about the resolution of their matter;
 - Drafting rules and regulations for the Board, as necessary and assisting the Board in meeting its financial disclosure management and enforcement responsibilities.
- **All of the Services provided by Counsel under this Agreement shall be provided by Attorney named.** The parties acknowledge and understand that the Attorney named is essential to this Agreement and may not be removed or replaced by Counsel without the prior written consent of the County. Notwithstanding the foregoing, the County reserves the right to terminate this Agreement in the event that Attorney named becomes unavailable or unable to provide the Services hereunder.

In a voucher billed to Nassau County for services rendered in September 2016, Counsel invoiced **eight hours for the review of the financial disclosure forms. Four hours were billed by the Counsel and four hours were billed by another Attorney in the Counsel's firm.** There are multiple concerns with this voucher, as follows:

- The Financial Disclosure forms are being reviewed by other Attorney's in the Counsel's firm who are not members of the Board of Ethics. When reviewing the vouchers for services from January 1, 2016 through present, **there is a count of 26.25 hours from other Attorneys in the Counsel's office totaling \$5,906 invoiced to Nassau County.**

Findings and Recommendations

- **The Counsel to the Board should not be the only person reviewing the Financial Disclosure forms. This should be done by the Board of Ethics as it is one of the Board’s primary functions, with assistance from Counsel if requested.** The Counsel is to offer advice if the Board of Ethics needs further guidance with the forms, not handling the review. In the minutes that reflect the hours invoiced it states: **“Counsel and an associate from his law firm have been reviewing *random samplings* of the 2015 Financial Disclosures for both completeness, as well as any potential conflicts of interest with county vendors/contractors.” It does not appear the Board of Ethics at this time was reviewing the Financial Disclosure forms and all of the forms were not being reviewed since the Counsel was reviewing “random samples.”**

It should also be noted that Financial Disclosure Forms were being taken off County property for review.⁵⁰ To mitigate the risk of unauthorized access, loss, or tampering, documents containing employees confidentially filed personal and financial information (on Nassau County Financial Disclosure Forms) should not leave County property.

Audit Recommendations:

We recommend that the:

- a) Members of the Board of Ethics review the Financial Disclosure forms and consult with the Counsel to the Board for guidance on the forms in the Board of Ethics meetings;
- b) Counsel to the Board be the only party of his firm involved in the Board of Ethics, as per the language of the contract; and
- c) Original Financial Disclosure Forms should not be taken off of County property.

⁵⁰ See Auditors Response to Finding 16 in Appendix G.



**Code of Ethics
Booklet**



Dear Employee

This booklet contains the text of the Nassau County Code of Ethics, which is binding on all paid and unpaid County officers and employees.

It also contains the Plain language Guide to Government Ethics, which can guide you in meeting the ethical requirements of the Code.

Appendix A - Code of Ethics Booklet

Plain Language Guide to Government Ethics for Nassau County Officers and Employees

This plain language Guide to Government Ethics has been prepared by the Board of Ethics to assist you in avoiding actual or potential conflicts of interest. It is not intended to replace the actual text of the Nassau County Code of Ethics, reprinted later in this booklet which contains more specific limitations and exceptions as well as provisions applicable to specific classes of County officers and employees, such as Legislators.

I. Introduction

The purpose of the Code of Ethics is to foster integrity in government, promote public confidence, and help County officers and employees to discharge their official duties without fear of unwarranted accusations of unethical conduct.

II. Who Must Comply?

You must comply with the Code of Ethics if you are a County officer or employee, whether you are paid or unpaid. You must comply with the Code of Ethics if you are a member of a County board or commission.

III. Guide to Government Ethics

1. Using Your Public Office for Private Gain. You may not take an action or fail to take an action as a public servant for the purpose of obtaining a financial benefit for you, a member of your immediate family, or anyone with whom you have a business or financial relationship.

2. Contracts with the County. Neither you, nor a member of your immediate family, may enter any kind of a contract with the County. In general, this does not prohibit you from seeking a license or permit from the County as a member of the public wishing to utilize County resources,

or from getting a license to operate a business in the County other than on County property, or from serving as a foster parent. Further, if your position with the County is uncompensated, you are not prohibited from having contracts with agencies other than your own agency.¹

3. Owning/running a business. If you are paid by the County, you may not own any part of a business or firm that does business with the County, or be an officer or director of such a business. However, you may own less than 5% of the stocks of a publicly-traded corporation that does business with the County.

4. Working on contracts in which you have an interest. Whether you are paid or unpaid, it is a misdemeanor for you to do any work for the County on a contract if you are an agent or principal of a firm that is interested in the contract, if you are an owner of any stock in a firm that is interested in the contract, or if you will profit from the contract in any way. It is also a misdemeanor for you to attempt to influence any action on such a contract.

5. Misuse of County Resources. You may not use County letterhead, personnel, equipment, supplies, or resources for a non-County purpose, nor may you pursue personal or private activities during times when you are required to work for the County.

6. Gifts. You may not accept gifts or favors worth more than \$75.00 per year from anyone other than your parent, spouse or child, if you know the person is interested in doing business with the County. You may not request or encourage gifts of any value from any person, other than your parent, spouse or child, who is interested in business dealings with the County. You may not accept a reward of any kind or amount for performing your duties as a county officer or employee.

7. Moonlighting and outside interests. You may not have an outside job or engage in outside activities that conflict with your duties as a county officer or employee.

8. Confidential Information. You may not disclose confidential County information or use it for any non-County purpose.

Appendix A - Code of Ethics Booklet

9. **Appearing for Others.** You may not communicate with any County agency on behalf of a person or entity from whom you receive a salary or compensation.

10. **Lawyers, Agents and Brokers.** You may not represent anyone other than yourself or the County in business or professional dealings with any County agency, unless your county position is uncompensated and there is no conflict between your outside professional activities and your official duties.

11. **Hiring and supervision of relatives.** You may not hire or press others to hire your relatives and you may not directly supervise or evaluate your relatives without the written approval of the Board of Ethics.

12. **Post-Employment Two-Year Ban.** For two years after you leave County service, you will not be permitted to communicate with any County agency on behalf of an entity with which you have a business relationship other than a governmental entity. However, if your position with the County is uncompensated, this restriction will only extend to post-employment communications with your own agency.

13. **Post-Employment Permanent Ban.** After you leave County service, you may never work on a particular matter you personally and substantially worked on for the County.

14. **Disclosure and Non-Participation.** You must refrain from acting on any matter in which you have a personal interest that could appear to compromise your impartial judgments and you must report the conflict and your intent to refrain from acting to the Board of Ethics.

15. **Disclosure of interest in legislation or contracts.** You must disclose any interest you have in existing or proposed County legislation or contracts to the Board of Ethics and your immediate supervisor.

16. **Serving not-for-profit organizations.** You may be an officer or director of, or a policymaker for, a not-for-profit organization that does business with the County if you do this activity on your own time, you refrain from taking any action as a County employee that could impact

on that organization and you do not contact anyone at the County in regard to that agency. You may not receive compensation for such work but you may receive reimbursement for expenses that you incur in working for the organization.

17. **Influencing others to act in a manner inconsistent with the Code.** You may not influence other County officers or employees to act in a manner that would violate the Code of Ethics.

IV. Annual Financial Disclosure

Depending on the County position that you hold, you may be required to file an annual financial disclosure statement with the Board of Ethics.²

V. Board of Ethics

You may request confidential advisory opinions and waivers, for good cause, from these requirements from the Board of Ethics. For further information or to obtain answers to specific questions, you may write or call the Board of Ethics at:

Nassau County Board of Ethics
One West Street
Mineola, NY 11501
(516) 571-3056

¹ In addition to the prohibitions found in the Code of Ethics, Charter §2203 prohibits having an interest in the sale of a tax lien certificate, property acquired by the County in a tax collection procedure, or in any condemnation involving the County or a local municipality.

² See, Nassau County Administrative Code §22-4.3 (Financial Disclosure Law).

Nassau County Code of Ethics



Section 2218 of the Nassau County Charter, as amended by
Local Law No. 4-2007 and Local Law No. 6-2017

Nassau County Code of Ethics:

Section 2218 of the Nassau County Charter, as amended by Local Law
No. 4-2007 and Local Law No. 6-2017

1. Definitions.

"Agency" shall include any agency, Board, bureau, commission,
department or other similar entity of the County.

"Appear" shall mean to make a communication in any form,
personally or through another person, including, but not limited to,
by letter, by telephone, by e-mail or by facsimile, on behalf of a
person or entity from whom one receives income or compensation.

"Board" shall mean the Nassau County Board of Ethics.

"County officer or employee" shall include the officers and
employees of any agency of the County, as defined herein, in
addition to any officer who is appointed, pursuant to law, by the
County to serve any other entity unless such person is subject to the
Public Officers Law and the oversight of the State Ethics Commission
or is otherwise exempt from the local ethics code.

"Financial Interest" shall mean (i) a foreseeable direct or indirect
pecuniary or material benefit accruing to a County officer or
employee as a result of a financial or business dealing with the
County; (ii) an ownership interest in any entity, except a publicly-
traded corporation of which the County officer or employee owns
less than five percent of the outstanding stock; or (iii) a position as
officer, director, trustee, or partner of an entity. For the purposes of
this section, the financial interests of an officer or employee's
spouse, domestic partner, minor children and dependents shall be
deemed financial interests of such officer or employee; provided,
however, that a County officer or employee shall not be deemed to
have a financial or other private interest in the employment, by the
County, of his or her spouse, domestic partner, minor child or
dependent.

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"Ministerial act" shall mean an administrative act, including the issuance of a license, permit or other permission by the County, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

"Relative" shall mean mother, father, son, daughter, sister, brother, stepmother, stepfather, stepson, stepdaughter, aunt, uncle, cousins in the first and second degree of consanguinity, domestic partner, mother-in-law, father-in-law, sister-in-law, brother-in-law and grandparents.

2. Conflicts of Interest Prohibited

a. Except as provided in subdivision twelve of this section, no County officer or employee whether paid or unpaid, shall:

- (1) Have a financial interest, except by operation of law, in any business or professional dealings with the County or any agency thereof or a financial interest in any entity which has business or professional dealings with the County.
- (2) Participate as attorney, agent, broker, representative or employee in a business or professional transaction with, or lawsuit against, the County or any agency thereof for any person or entity directly or indirectly in any manner whatsoever or fail to ensure that adequate measures are taken to prevent his or her participating in any manner in any such transaction where a law firm or other entity in which such person is an owner, member or employee becomes involved as attorney, agent, broker or representative in such a transaction with, or lawsuit against, the County.

(3) Accept or retain other employment, engage in any business transactions, make or retain any investments, have any financial interest, or engage in other activities that directly or indirectly create a conflict with his or her official duties.

- b. A County officer or employee shall not appear before any agency or officer of the County except on behalf of the County, provided, however, that for County officers or employees serving in an unpaid capacity, this prohibition shall apply only to appearances before the agency served by such officer or employee.
- c. No County officer or employee shall receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter that is before the agency served by such officer or employee, or any agency over which he or she has supervisory control or to which he or she has the power to appoint any member, officer or employee.
- d. No legislator, during his or her term and for a period of two years from the expiration of the term to which he or she was elected, shall engage in any employment as a lobbyist on behalf of any person, firm, corporation or association doing business with the County.

3. Gifts and Favors.

No officer or employee of the County, whether paid or unpaid, shall accept gifts aggregating to seventy-five dollars (\$75.00) or more during a twelve-month period, nor solicit any gift of any value, whether in the form of services, loan, thing or promise of any other form, from any one person, firm or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business or

Appendix A - Code of Ethics Booklet

professional dealings with the County or any agency thereof. For purposes of this subdivision, the value of a gift of a ticket or comparable authorization entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket or the cost of entrance to the general public, notwithstanding the fact that part of the cost of attending is a tax-deductible or political contribution.

4. Recusal and Disclosure of Interest.

- a. A County officer or employee, whether paid or unpaid, shall promptly recuse himself or herself from acting on any matter before the County in which he or she has (i) any direct or indirect financial or (ii) any other private interest that a reasonable person would perceive to compromise his or her ability to make impartial judgments or take discretionary actions in the best interests of the County.
- b. Any County officer or employee who recuses himself or herself pursuant to paragraph (a) of this subdivision shall be required to disclose such recusal in writing to the Board and the nature of his or her private interest. The Board shall file and retain such disclosure as a public record. The Board may issue an opinion in response to such disclosure, request additional information related to the disclosure, give advice by letter or informal communication, or file the disclosure with no response. Neither the disclosure nor any response by the Board shall be confidential.
- c. Where a County officer or employee has, or acquires an interest in any existing or proposed legislation, contract, purchase agreement, lease agreement, use and occupancy agreement, or other agreement with the County, the officer or employee shall disclose the nature and extent of that interest in writing to his or her immediate supervisor and to the Board as soon as he or she has knowledge of the actual or prospective interest.

5. Disclosure of Confidential Information.

No officer or employee of the County, whether paid or unpaid shall disclose confidential information concerning the property, government or affairs of the County or any other confidential information of an official character obtained as a result of County employment except when disclosure is required by law or when such information is otherwise available to the public, nor shall he or she use such information to advance the financial or other private interest of himself or herself or others.

6. Misuse of County resources.

No officer or employee of the County shall use the resources of the County in furtherance of his or her business, professional or political interests or activities, or in furtherance of the interests or activities of any outside entity other than pursuant to a County contract with such entity, without the approval of the head of his or her agency and the approval of the Board of Ethics upon a finding by the Board that such activity is in furtherance of the interests of the County.

7. Hiring and supervision of relatives.

No officer or employee of the County shall hire or induce others to hire a relative of such officer or employee nor shall any officer or employee of the County directly supervise or evaluate the work of any relative employed by the County except: a) as required by the Civil Service Law or rules promulgated thereunder; b) pursuant to a supervisory arrangement that began prior to the effective date of this subdivision; or c) with the written approval of the Board of Ethics. In determining whether to approve the request of an officer or employee to hire or supervise a relative, the Board shall consider, among other things, the nature of the

Appendix A - Code of Ethics Booklet

relationship at issue and any steps that have been taken to ensure objectivity in any such hiring decision, salary determination, evaluations, recommendations for promotions and increases and other aspects of a supervisory relationship. Neither such request for Board approval nor the determination of the Board shall be confidential. Nothing in this subdivision, nor any approval issued by the Board pursuant to this subdivision, shall relieve an employee of the continuing requirement to exercise his job duties in the best interests of the County, without giving raises, promotions or other beneficial terms or conditions of employment based on private interests or personal relationships, and the Board may continue to enforce such requirement, as it deems appropriate, whether or not it has approved the hiring or supervision of a relative.

8. Post-employment restrictions.

- a. No person who has served as a paid officer or employee of the County shall, within a period of two years after the termination of such service or employment, appear before any Board, agency, officer or employee of the County, except on behalf of the State, or a political subdivision or instrumentality thereof, or in furtherance of the interests of the County with the approval of the Board upon application of a County agency. No person who has served as an unpaid officer or employee of the County shall, within a period of two years after the termination of such service or employment, appear before his or her former agency or the officers or employees thereof, except on behalf of the State, or a political subdivision or instrumentality thereof, or in furtherance of the interests of the County with the approval of the Board upon application of a County agency.
- b. No person who has served as a paid or unpaid officer or employee of the County shall receive compensation or render any services in relation to any case, proceeding,

application or particular matter which such person was directly concerned with, personally participated in, or actively considered during the period of his or her service or employment, except in furtherance of the interests of the County with the approval of the Board upon application of a County agency. A former officer or employee is also required to ensure that adequate measures are taken to prevent his or her participating in any manner in such particular case, proceeding, application or particular matter if a law firm or other entity in which such person is an owner, member or employee becomes involved with any aspect of such particular case, proceeding, application or particular matter

- c. No former paid or unpaid officer or employee of the County shall disclose confidential information concerning the property, government or affairs of the County or any other confidential information of an official character obtained as a result of County employment except when disclosure is required by law or when such information is otherwise available to the public, nor shall he or she use such information to advance the financial or other private interest of himself or herself or others.

9. Pecuniary interest of officers, employees or agents in execution of contracts prohibited.

No officer, employee or agent of the County, whether he or she be such by election, appointment or contract shall directly or indirectly, either on his or her own behalf or for another person or corporation, make or participate in making, including the preparation of specifications or plans for, any contract or agreement in which said officer or employee or agent is interested directly or indirectly as principal or agent or as an officer of or owner of stock in a corporation, nor shall an officer, employee or agent in any way influence the action of

Appendix A - Code of Ethics Booklet

any other officer or employee or agent in relation to the making, or fail to recuse him or herself from the discussion and approval process of any County contract or agreement in which he or she has such an interest. In addition to other penalties that may be imposed by the Board as set forth in this Code, if any such officer or employee or agent shall willfully violate the provision of this section, such contract or agreement shall be voidable, and such officer or employee or agent shall be guilty of a misdemeanor and upon conviction thereof shall forfeit his office or employment or agency and shall be further punished by a fine of not more than one thousand dollars or by both such fine and imprisonment. The provisions of this section shall not apply to the making of a contract with the County to serve as a foster parent or to act as a physician for any County department or agency or to any ministerial acts taken by a County officer, employee or agent. Further, the provisions of this section shall not preclude a contractor or a contractor's officers and employees from advocating for or participating in the drafting of extensions, renewals or amendments of its own contract with the County nor preclude a contractor from assisting the County with the drafting of specifications upon request of a County agency.

10. Board of Ethics.

- a. There shall be a Board of Ethics consisting of five members, four (4) of whom shall be appointed by the County Executive, subject to the confirmation of the County Legislature, all of whom shall reside in the County and who shall serve without compensation, not more than two (2) of whom shall be members of the same political party, and the County Attorney. The members of the Board shall elect a chairperson. Except for the County Attorney, each member shall serve for a term of five (5) years.
 - i. With the exception of the County Attorney, no person, while serving as a member of the Board, shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, have business dealings with the County or any elected official, hold any political party office, appear as a lobbyist before the County or make a contribution to any County elected official or candidate for County office.
 - ii. Any vacancy occurring on the Board other than by expiration of a term shall be filled by nomination of a successor within sixty (60) days of the creation of the vacancy. The County Legislature shall act on such nomination within sixty (60) days of the filing of the appointing resolution in the Office of the Clerk of the Legislature.
 - iii. Three (3) members of the Board shall constitute a quorum, and the Board shall have the power to act by a vote of three (3) members.
 - iv. The members of the Board shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.
- b. The Board shall have the authority to investigate complaints of actions in violation of this section or may initiate an investigation by a majority vote of the Board. The results of any such investigation may be shared, in the discretion of the Board, with necessary and appropriate County officers and law enforcement officials. In furtherance of this investigatory function, the Board may request that the Commissioner of Investigations use the power and resources of his or her office to assist the Board.
- c. The Board shall develop written guidelines as to the procedures it shall follow in the investigation and determination of a complaint. Such guidelines shall be

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- f. The Board shall promulgate its own rules and regulations concerning its forms and procedures and shall maintain appropriate records of its opinions and proceedings.
- g. The Board shall administer and enforce the provisions of Section 22-4.3(c) of the Nassau County Administrative Code relating to the filing of financial disclosure forms and financial disclosure requirements by County officials, officers and employees. The Board may delegate to any County officer the duty to distribute, collect and review financial disclosure forms and otherwise administer and enforce section 22-4.3 of the Nassau County Administrative Code relating to financial disclosure; provided, however, that such officer may not impose penalties but may make recommendations to the Board regarding the imposition of penalties for violations of section 22-4.3.
- h. The Board shall have the responsibility of informing County officers and employees and assisting their understanding of conflicts of interest requirements set forth by this Code and shall provide ethics training, guidance documents, seminars and education to Nassau County's officers, employees, departments, boards and commissions. Such training may be on the request of a particular department on a particular subject or subjects or upon the Board's own initiative and recommendation. The Board may conduct in person training and/or may utilize interactive on-line, web-based technologies in furtherance of this section.
- i. The Board shall develop and update as necessary written ethics guidelines based on this Code of Ethics that shall be provided to all employees hired after the effective date of this Local Law. Each employee hired after the effective date of this Local Law shall sign a statement that they received the guidelines and that they must abide by all rules and requirements contained therein. Such statement shall be maintained in the employee's personnel file.
- j. The Board shall include a webpage on the Official Website of Nassau County containing guidance documents, web based instructional and educational resources, and any forms necessary to seek advisory opinions or to file an ethics complaint.
- k. The Board shall prepare and submit a report to the County Executive and the County Legislature no later than March 1 each year, summarizing the activities of the Board during the preceding calendar year.
- l. The Board shall meet at least once a quarter, may schedule additional meetings as necessary, and shall prepare and submit to the County Executive and the County Legislature a schedule of its meeting no later than February 1 each year. Such schedule shall be posted on the Official Website of Nassau County.
- m. The Board may make recommendations to the Nassau County Legislature with respect to the County Code of Ethics. The Board, upon its own formulation, shall promulgate its own rules and regulations as to its forms and procedures and shall maintain records of its opinions and proceedings. Copies of all rules and regulations promulgated by the Board shall be filed with the Clerk of the Legislature and posted to the Official Website of Nassau County within ten days of their adoption.

11. Penalties.

A violation of any of the provisions of this section shall constitute cause for forfeiture of pay, suspension, imposition of fines of up to \$10,000 per violation or removal from office or employment, as may be imposed by the Board, after providing an opportunity to be heard in a proceeding conducted in

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accordance with due process. Any person found to have violated any such provision may file with the Board within seven days of such finding a written notice indicating his or her intent to commence a proceeding to review the determination pursuant to article seventy-eight of the civil practice laws and rules. Upon receipt of such notice, the Board shall stay the imposition of any penalty imposed pursuant to this subdivision until the commencement of the article seventy-eight proceeding. Resignation or dismissal from County employment shall not bar the imposition of penalties under this section for violations of the Code that occurred during the period of employment. Penalties may also be imposed under this section on a former employee for violations of the postemployment restrictions. The County Attorney shall provide for appropriate reporting and other services in relation to any such proceeding. Nothing in this section shall limit the imposition of any other penalties, fines and/or other sanctions which may be provided by law or prevent the County Executive or other appropriate supervisory officer from taking disciplinary action based on the findings of a separate inquiry or investigation.

12. Exemptions.

- a. No employee may have any interests or take any action prohibited by subdivisions two through six of this section without the approval of the Board; provided that the provisions 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) A ministerial act.
 - (3) Gifts:
 - (A) received by the County officer or employee from his or her parent, spouse or child; or
 - (B) accepted on behalf of the County and transferred to the County.
 - (4) Gifts or benefits having a reasonable value that are received by a County officer or employee listed in section 11 of the Domestic Relations Law for the solemnization of a marriage by that officer or employee at a place other than his or her normal public place of business or at a time other than his or her normal hours of business.
 - (5) Awards from charitable organizations
 - (6) Receipt of County services or benefits, or use of County facilities that are generally available on the same terms and conditions to residents or a class of residents in the County.
 - (7) County officers or employees appearing or practicing before the County or receiving compensation for working on a matter before the County after termination of their County service or employment where they performed only ministerial acts while working for the County or where they are appearing in an official capacity as an officer or employee of another governmental entity.
 - (8) Former County officers or employees appearing before the County where such appearances are a necessary incident of an otherwise permitted representation or employment in relation to an adjudicative proceeding before an agency or body, or a court other than an agency, Board or commission of the County.
- b. Notwithstanding the foregoing provisions of this section, any textbook authored by a member of the faculty as

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Nassau Community College may be sold at the college and a royalty or other financial remuneration may be paid to such author, provided the sale of such a faculty authored textbook shall be made in accordance with the rules and regulations promulgated by the Board of Trustees of the college.

- c. Notwithstanding the foregoing provisions of this section, a County officer or employee may be an officer, director or trustee of a membership corporation or other nonprofit corporation or association, public authority, or public benefit corporation, or hold a policy making position with such entity, and participate in all activities and transactions of such entity, provided he or she receives no financial remuneration either directly or indirectly from such entity other than expenses actually and necessarily incurred in the performance of his or her duties. Any officer or employee receiving such remuneration for expenses shall, for each year in which such remuneration is received, be required to complete and file the financial disclosure statement promulgated pursuant to the provisions of §22.4.3 of the Administrative Code. A County officer or employee serving a membership corporation or other nonprofit corporation or association pursuant to this paragraph, other than in an ex-officio capacity, shall recuse himself or herself from acting, in his or her capacity as County officer or employee, on any matters directly affecting such entity, shall not use any confidential County information nor, without the approval of the Board, communicate with any County Board, agency, officer or employee in furtherance of the interests of such corporation or entity nor work on any case, proceeding, application or particular matter which such person has been directly concerned with, personally participated in, or actively considered as a County officer or employee.
- d. Notwithstanding the foregoing provisions of this section, a person serving the County or any agency thereof without compensation shall not be subject to the prohibitions set forth in subparagraphs one and two of paragraph (a) of subdivision two of this section.
- e. Nothing in this section shall be deemed to prohibit an officer or employee of the County from providing services to a local development corporation, public authority, public benefit corporation, or similar entity as may be determined by the Board, where such services are provided pursuant to law or contract between the County and such entity, and the officer or employee does not receive additional compensation for such services. Such service shall not be deemed to be a private interest of such officer or employee nor to create a conflict with official duties.
- f. Notwithstanding the foregoing provisions of this section, an officer or employee of the County shall not be deemed to be in violation of paragraph (a) of subdivision two of this section for making a contract with the County to serve as a foster parent unless the making of such contract is in conflict with the proper discharge of his or her official duties.
- g. Notwithstanding any other provision of law, an elected official or a deputy county executive may attend a function given by a civic association or nonprofit organization of a charitable or community nature, when invited and paid for by the sponsoring organization, or attend a function of an association composed of representatives of business, labor, professions or the news media, when invited and paid for by the sponsoring organization. In addition, a staff member may be designated to attend any such functions as a representative of an elected official when specifically requested to do so by the elected official.
- h. Notwithstanding any other provision of law, an elected official or a deputy county executive may be a guest at

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ceremonies or functions sponsored or encouraged by the County as a matter of County policy. In addition, a staff member may be designated to attend any such ceremonies or functions as a representative of an elected official when specifically requested to do so by the elected official.

- i. Notwithstanding any other provision of law, an officer or employee may be a guest at any ceremony, function, conference or occasion where the attendance of the public servant is in furtherance of the interests of the County, where the attendance has been approved in writing, in advance where practicable or within a reasonable time thereafter, by the County Executive or a deputy county executive, or in the case of the Legislature by the Presiding Officer or the Minority Leader, in the case of all offices of elected officials by said elected official or their designated officer, in the case of the Office of Legislative Budget Review by the Director of said office and in the case of the Clerk of the Legislature by the Clerk of the Legislature.

13. No officer, employee, independent contractor, vendor, or consultant shall intentionally induce any County officer or employee to take any action or to refrain from taking any action in violation of any provision of this Code.

14. Distribution of Code of Ethics.

Within thirty days of the effective date of this chapter, the Board of Ethics shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the County, and shall further cause a copy of this Local Law to be added as a webpage on the Official Website of Nassau County. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of County employment.



Appendix B – Annual Statement for Financial Disclosure for County of Nassau 2017

Name of Family Member	Position	Organization	County Department of Agency and Nature of Involvement

b) *Outside Employment.* Describe any outside occupation, employment, trade, business or profession providing more than \$2,500 during the reporting year for you or your spouse or dependent children, if any, and indicate whether such activities are regulated by any state or local agency.

Name of Family Member	Position	Name, Address, and Description of Organization	State or Local Agency	Category of Amount

c) *Future Employment.* Describe any contract, promise, or other agreement between you and anyone else with respect to your employment after leaving your County office or position.

d) *Past Employment.* Identify the source and nature of any income you have received in excess of \$2,500 during the reporting year from any prior employer, including deferred income, contributions to a pension or retirement fund, profit sharing plan, severance pay, or payments under a buy-out agreement.

Name and Address of Income Source	Description of Income (i.e., pension, deferred, ect.)	Category of Amount

e) *Investments.* Itemize and describe all investments in excess of \$5,000 or five percent of the value in any business, corporation, partnership, or other assets including stocks, bonds, loans, pledged collateral, and other investments, held by, or for, you or your spouse during the reporting year. List the location of all real estate within the County or within five miles thereof, in which you or your spouse have an interest, regardless of its value.

Name of Family Member	Name and Address of Business or Real Estate	Description of Investment	Category of Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

f) *Trusts.* Identify each interest in excess of \$2,500 held by you in a trust or estate or similar beneficial interest, if reasonably ascertainable, except for IRS eligible retirement plans or interests in an estate or trust of, or for, a relative. Do not list any IRS eligible retirement plan or deferred compensation plan.

Name of Family Member	Trustee/Executor	Description of Trust/Estate	Category of Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

g) *Other Income.* Identify the source and nature of any income in excess of \$1,000 per year from any source not described above, including teaching income, lecture fees, honoraria, consulting fees, contractual income, or other income of any nature, received by you or your spouse.

Name of Family Member	Name and Address of Income Source	Nature of Income	Category of Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. GIFTS AND HONORARIA

List the source of all gifts in excess of \$1,000 received during the last year by you, your spouse or dependent child, excluding gifts from a relative. The term “gifts” includes gifts of cash, property, personal items, payments to third parties on your

behalf, forgiveness of debt, honoraria, and any other payments that are not reportable as income. Do not list campaign contributions.

Name of Family Member	Name and Address of Donor	Category of Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. THIRD-PARTY REIMBURSEMENTS

Identify and describe the source of any third-party reimbursement for travel-related expenditures in excess of \$1,000 for any matter that relates to your official duties. The term "reimbursement" includes any travel-related expenses provided by anyone other than the County for speaking engagements, conferences, or fact-finding events that relate to your official duties. Do not list campaign contributions.

Source	Description	Category of Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. DEBTS

Describe all your debts and those of your spouse in excess of \$5,000. Do not include: debts to relatives, debts incurred in the ordinary course of your trade, business or professional practice or that of your spouse; obligations to pay maintenance in a matrimonial action, alimony or child support payments; revolving charge accounts under \$5,000; any loans issued in the ordinary course of business by a financial institution to finance education costs, the cost of home purchase or improvements for a primary or secondary residence or purchase of a personally owned motor vehicle, household furniture or appliance.

Name of Family Member	Name and Address of Creditor	Category of Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. INTERESTS IN CONTRACTS

Describe any interest of you, your spouse, or your dependent children have in any contract involving the County or any village, town or municipality located within the County.

Name of Family Member	Contract Description
_____	_____
_____	_____
_____	_____
_____	_____

8. POLITICAL PARTIES

List any position you held within the past five years as an officer of any political party, political committee, or political organization. The term “political organization” includes any independent body or any organization that is affiliated with or a subsidiary of a political party.

Signature Date

LEVENTHAL, MULLANEY & BLINKOFF, LLP
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September 7, 2018

Via email: jgreene1@nassaucountyny.gov

Ms. JoAnn Greene
Field Audit Director
Office of the Nassau County Comptroller
240 Old Country Road
Mineola, NY 11501

Via email: jmcdermott@nassaucountyny.gov

Ms. Janis McDermott
Field Audit Supervisor
Office of the Nassau County Comptroller
240 Old Country Road
Mineola, NY 11501

Re: Audit Division Document Request – Board of Ethics

Dear Ms. Greene and Ms. McDermott:

As you know, I am counsel to the Board of Ethics and have been designated by the Board to serve as its liaison in connection with the audit referred to in your Engagement Letter of July 10, 2018, addressed to Kenneth Gartner, Chair of the Board of Ethics. Following please find the Board's initial response to the Audit Division's initial document request, limited in temporal scope to the audit period, fiscal year 2016 to the present.

1. Minutes of Board of Ethics meetings: January 1, 2016 to the present.
1. Enclosed are copies of Minutes of Board of Ethics meetings: January 1, 2016 to the present.
2. Board of Ethics Policy and Procedures Manual and/or rules of Procedure.
2. The Board of Ethics is actively engaged in reviewing and updating its policies and procedures. Enclosed are copies of policies and procedures currently in effect.
3. List of Job Titles/Employees required to file Financial Disclosure Forms sent to department heads for 2017.

Appendix C – September 7, 2018 Response to Audit Document Request

Ms. JoAnn Greene
Ms. Janis McDermott

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September 7, 2018

3. Nassau County Administrative Code §22-4.3 sets forth certain titles of officers and employees required to file annual statements of financial disclosure. In addition, officers and employees are required to file financial disclosure statements if they hold “policy making” positions, as that term is used for purposes of the financial disclosure law. Each year, the Board of Ethics sends to department heads a memo setting forth guidelines for determining who is a “policy maker” within the meaning of the financial disclosure law. The guidelines provided to department heads are based on guidelines promulgated by the Temporary State Commission on Local Government Ethics. The annual Board of Ethics memo is accompanied by a list of persons within the respective department who were required to file disclosure statement for the previous year, for use by the department head in adding and subtracting names as appropriate. Once the list of persons required to file disclosure statements is compiled, the role of the department head is at an end. Thus, the Board of Ethics does not send to department heads a list of job titles or employees required to file annual statements of financial disclosure.
4. Policymaker memos and Lists of Employees/Officers provided by Department Heads for 2017 Financial Disclosure Form.
4. Enclosed are copies of the Board of Ethics policy maker memo for the 2017 filing year and the compiled list of officers and employees required to file for that year.
5. List of Annual Financial Disclosure forms received for Reporting Years 2016 and 2017.
5. Enclosed is a list of Annual Financial Disclosure forms received for Reporting Years 2016 and 2017.
6. Access to the 2016-2017 Financial Disclosure Forms.
6. Annual Statements of Financial Disclosure contain information which, if disclosed, would result in an unwarranted invasion of the personal privacy. In some cases, the Disclosure Statements contain information which, if disclosed, could result in identity theft or a risk to the personal safety of the filer or to his or her family. Accordingly, it is the policy and practice of the Board of Ethics, upon receipt of a request to inspect or copy a Disclosure Statement, to redact the filer’s home address, the names of minor children, and the categories of amounts. It is also the policy and practice of the Board of Ethics to notify the filer that a request for inspection or copying has been received, and to give the filer the opportunity to identify any information that he or she believes would, if disclosed, result in an unwarranted invasion of personal privacy. The Board of Ethics, within the discretion afforded by the New York Freedom of Information Law, redacts such further information as it deems appropriate. In view of the foregoing policy and practice of the Board of Ethics, your request for access to the 2016-2017 Financial Disclosure Forms would impose a significant and time consuming administrative burden. Previously, the Commissioner of Investigations sought access to the Financial Disclosure Forms. In view of the policy considerations and administrative burden that the request would have imposed, the Commissioner of Investigations was persuaded to view a sample of the Disclosure Forms. The Commissioner identified three randomly selected letters of the alphabet, and viewed the redacted forms filed by individuals whose last names began with those letters. We ask that you do the same.

Appendix C – September 7, 2018 Response to Audit Document Request

Ms. JoAnn Greene
Ms. Janis McDermott

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September 7, 2018

7. A log or list of requests for advisory opinions or informational letters received by the Board of Ethics for the period January 1, 2016 through the present date, and any related responses from the Board.
7. The Board of Ethics received no informational letters for the period January 1, 2016 through the present date. The Board of Ethics otherwise objects to this request.

The request for information regarding particular advisory opinions is beyond the scope of the audit as described in your Engagement Letter, dated July 10, 2018 (“*On April 9, 2018, the Office of the Nassau County Comptroller commenced a Limited Review of Hiring Practices and Related Parties (Nepotism) in Nassau County Government. Hiring Practices (hiring practices with regard to related parties) and conflicts of interest (interest based on relationships) is incorporated in the Nassau County Code of Ethics, as such the Board of Ethics will be included in our review.*”)

The Board of Ethics does not participate in hiring, except to render advisory opinions when requested to do so. The Code of Ethics provides at Section 7 (Hiring and supervision of relatives) that:

No officer or employee of the County shall hire or induce others to hire a relative of such officer or employee nor shall any officer or employee of the County directly supervise or evaluate the work of any relative employed by the County except: a) as required by the Civil Service Law or rules promulgated thereunder; b) pursuant to a supervisory arrangement that began prior to the effective date of this subdivision; or c) with the written approval of the Board of Ethics. In determining whether to approve the request of an officer or employee to hire or supervise a relative, the Board shall consider, among other things, the nature of the relationship at issue and any steps that have been taken to ensure objectivity in any such hiring decision, salary determination, evaluations, recommendations for promotions and increases and other aspects of a supervisory relationship. Neither such request for Board approval nor the determination of the Board shall be confidential. Nothing in this subdivision, nor any approval issued by the Board pursuant to this subdivision, shall relieve an employee of the continuing requirement to exercise his job duties in the best interests of the County, without giving raises, promotions or other beneficial terms or conditions of employment based on private interests or personal relationships, and the Board may continue to enforce such requirement, as it deems appropriate, whether or not it has approved the hiring or supervision of a relative.

The Code of Ethics provides at Section 10 (Board of Ethics), in pertinent part, that:

The Board also shall render advisory opinions with respect to this section, such opinions to be rendered only to an officer or employee or former officer or employee requesting advice relative to himself or herself, or to the head of a County agency, to the County Executive or to a Legislator.... The Board shall only disclose and distribute opinions to the person duly requesting it.... Notwithstanding the provisions of this paragraph, all such advisory opinions issued by the Board either prior to or subsequent to the effective date of this local law may be issued with the names and other identifying information redacted and

Appendix C – September 7, 2018 Response to Audit Document Request

Ms. JoAnn Greene
Ms. Janis McDermott

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September 7, 2018

such advisory opinions issued with appropriate redactions shall be made available to the public to the extent the Board determines that identities can be meaningfully protected. Opinions may also be issued and disclosed without the names redacted with the permission of any person who will be identified.

The assurance of confidentiality of advisory opinions is a critical means of promoting integrity in County government, because it encourages County officers and employers to seek ethics advice. The disclosure of advisory opinions would be likely to have a chilling effect on the willingness of officers and employees to seek ethics advice, and would tend to undermine the County ethics program and frustrate the achievement of its important policy goals.

8. Records of results of investigations, along with any sanctions or penalties imposed by the Board for violations of the County's Code of Ethics for the period January 1, 2016 through the present dates.
8. The Board of Ethics conducted no investigations, and imposed no sanctions or penalties for violations of the County's Code of Ethics for the period January 1, 2016 through the present date.
9. Lists or sign in sheets for County employees/officials attending ethics training for the period January 1, 2016 through the present date.
9. Enclosed are Lists or sign in sheets for County employees/officials attending ethics training for the period January 1, 2016 through the present date.
10. Ethics training documents (i.e., PowerPoint presentation).
10. Enclosed are ethics training documents (i.e., PowerPoint presentation) for the period January 1, 2016 through the present date.
11. 2016-2017 Board of Ethics Annual Reports.
11. The Code of Ethics in effect for the year 2016 did not require the Board of Ethics to prepare or file an annual report, and none was prepared or filed for that year. The current Code of Ethics, enacted on July 10, 2017, imposed such a requirement. The Board of Ethics, newly constituted in 2018 pursuant to the 2017 Code, is engaged in the preparation of an annual report for the year 2017.

Very truly yours,

Steven G. Leventhal

Steven G. Leventhal

cc: Members and Secretary, Board of Ethics

Appendix D – September 7, 2018 Response to Audit Question List

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September 7, 2018

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Ms. JoAnn Greene
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Via email: jmcdermott@nassaucountyny.gov

Ms. Janis McDermott
Field Audit Supervisor
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Mineola, NY 11501

Re: Audit Division Question List – Board of Ethics

Dear Ms. Greene and Ms. McDermott:

As you know, I am counsel to the Board of Ethics and have been designated by the Board to serve as its liaison in connection with the audit referred to in your Engagement Letter of July 10, 2018, addressed to Kenneth Gartner, Chair of the Board of Ethics. Following please find the Board's initial response to the Audit Division's initial Question List, limited in temporal scope to the audit period, fiscal year 2016 to the present.

1. How does the Board of Ethics accomplish its clerical functions, such as scheduling meetings, receiving documents, receiving inquiries and to what extent are these functions performed by County Employees? And if so, under whose supervision?
1. The clerical functions of the Board of Ethics are performed by its Secretary, appointed from the staff of the County Attorney's Office, and supervised by the Board of Ethics.
2. Who presently has access to emails addressed to the Board of Ethics (at boardofethics@nassaucountyny.gov)?
2. The Board of Ethics objects to this question. Internal communications among the Board of Ethics and its staff are beyond the scope of the audit as described in your Engagement Letter, dated July 10, 2018 ("*On April 9, 2018, the Office of the Nassau County Comptroller commenced a Limited Review of Hiring Practices and Related Parties*").

Appendix D – September 7, 2018 Response to Audit Question List

Ms. JoAnn Greene
Ms. Janis McDermott

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September 7, 2018

(Nepotism) in Nassau County Government. Hiring Practices (hiring practices with regard to related parties) and conflicts of interest (interest based on relationships) is incorporated in the Nassau County Code of Ethics, as such the Board of Ethics will be included in our review.”)

3. Who in the past five years has had access to emails addressed to the Board of Ethics (at boardofethics@nassaucountyny.gov)?
3. The Board of Ethics objects to this question. Internal communications among the Board of Ethics and its staff are beyond the scope of the audit as described in your Engagement Letter, dated July 10, 2018 (“On April 9, 2018, the Office of the Nassau County Comptroller commenced a Limited Review of Hiring Practices and Related Parties (Nepotism) in Nassau County Government. Hiring Practices (hiring practices with regard to related parties) and conflicts of interest (interest based on relationships) is incorporated in the Nassau County Code of Ethics, as such the Board of Ethics will be included in our review.”)
4. Does the Board of Ethics have written policies and procedures? If so, please provide.
4. The newly constituted Board of Ethics is actively engaged in a review and codification of its policies and procedures. Enclosed are current Board of Ethics policies and procedures.
5. Does the Board of Ethics prepare an annual report?
5. The Code of Ethics in effect prior to July 10, 2017 did not require the Board of Ethics to prepare or file an annual report. The current Code of Ethics, enacted on July 10, 2017, imposed such a requirement. The Board of Ethics, newly constituted in 2018 pursuant to the 2017 Code, is engaged in the preparation of an annual report for the year 2017.
6. Does the Board have a formal training program, and if so, who provides it.
6. The Board conducts frequent ethics training programs provided by its counsel. The Board’s counsel has lectured extensively on the subject of government ethics in programs sponsored by municipal associations, including the New York State Association of Counties (2005-2011, 2013, 2015-2017), the Association of Towns of the State of New York (2002, 2008, 2011-2014), the New York Conference of Mayors and Municipal Officials (2006, 2011, 2013), the New York State Association of Clerks of County Legislative Boards (2016, 2017), and the County Attorneys’ Association of the State of New York (2011); the New York State Economic Development Council (2011-2017) bar associations, including the American Bar Association (2009), the New York State Bar Association (2001, 2006-2017), the Nassau County Bar Association (1998, 2002, 2004, 2008, 2010, 2012-2016), the Suffolk County Bar Association (2005, 2014, 2017), the New York City Conflicts of Interest Board (2013, 2017) and to law firms and universities. Since 2005, The Board’s counsel has presented the ethics component of the annual Orientation for Newly Elected and Appointed Officials offered by the New York State Association of Counties. He was recently engaged by the United Nations to present a one day refresher program to the staff of its ethics office and its departmental compliance officers on best practices in providing independent and confidential ethics advice in an international public sector setting. He is frequently engaged to provide

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ethics advice, and to present ethics training and continuing professional education programs to municipal officers and employees throughout the State, including the County of Rockland, (2010, 2012); the County of Nassau (2006, 2010, 2011, 2013, 2014, 2016, 2018); the County of St. Lawrence (2007); the City of Peekskill (2011); the Town of Oyster Bay (2017); the Town of Huntington (2016); the Town of Clarence (2014); the Town of Clifton Park (2009, 2011, 2013, 2014); the Town of Halfmoon (2015); the Town of Malta (2014); the Town of Yorktown (2013); the Town of Milton (2011); the Town of Putnam Valley (2006, 2008); the Town of North Hempstead (2007); the Town of Southampton (2004); the Village of Sag Harbor (2017); the Village of Old Brookville (2011); the Village of Rockville Centre (2009, 2006); and the Village of Muttontown (2008). Counsel has provided ethics training to each respective Board of Ethics.

7. Is ethics training mandatory for elected officials/appointed officials/others? Do candidates for office receive any ethics training?
7. The Code of Ethics does not mandate ethics training for elected/appointed officials/others. The Code of Ethics does not mandate ethics training for candidates for office. The Board of Ethics has no authority to mandate ethics training.
8. Are candidates for County elected offices required to file Financial Disclosure Forms?
8. Section 22-4.3 of the Nassau County Administrative Code requires candidates for county elective office to file Annual Statements of Financial Disclosure.
9. Do former employees file a Financial Disclosure Form if they had worked for the County within the last year?
9. Neither the State nor local financial disclosure laws require former municipal officers or employees to file Financial Disclosure Forms.
10. Do Board of Ethics members complete and file a Financial Disclosure Form?
10. Board of Ethics members complete and file a Financial Disclosure Form.
11. What is the process used to collect the annual financial disclosure forms? Are financial Disclosure statements logged in/inventoried in any way?
11. Financial Disclosure Forms may be filed with the Board of Ethics, its counsel, or its designee, the Deputy County Executive for Compliance. Filed Disclosure Forms are inventoried and maintained by the Board's Secretary.
12. How long does it typically take to receive all Financial Disclosure Forms? What is the process the Board of Ethics uses for reviewing the submitted annual financial disclosure statements?
12. Data on how long it "typically" takes to receive all Financial Disclosure Forms has not been compiled. Most Disclosure Forms are received on or before the date on which they are due. In performing its inspection of the financial disclosure statements, the Board of Ethics (i) determines whether all persons required to file annual statements of financial

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disclosure have done so by comparing the filed disclosure statements with the list of persons required to file pursuant to Administrative Code Section 22-4.3, subdivisions (2)(a) and (4); (ii) confirms that all questions have been answered; (iii) determines whether the annual statements of financial disclosure may reveal an actual or potential conflict of interest by comparing the secondary employers and investments with a list of county vendors, contractor and consultants; and (iv) determines whether the annual statements of financial disclosure may reveal an actual or potential conflict of interest by conducting a facial review of the disclosure statements.

13. What is the process the Board of Ethics uses to receive and investigate complaints or referrals of potential conflicts of interest and/or instances of nepotism?
13. The Board of Ethics is actively engaged in reviewing and updating its policies and procedures. The current Rules of Procedure for Adjudicatory Proceedings and Appeals relating to Civil Penalties provide for due process in adjudicatory proceedings and appeals before the Board prior to the assessment of civil penalties including: (i) notice of reasonable cause, (ii) notice of hearing, (iii) a decision based on the record as a whole, supported by substantial evidence, (iv) the right to call and cross-examine witnesses, (v) an opportunity to submit written arguments on issues of law and fact, and to present evidence on issues of fact, (vi) the right to be represented by counsel, (vii) the right to an expeditious hearing and to adjournments only upon good cause shown, and (viii) the right to a written decision setting forth findings of fact, conclusions of law. Enclosed are copies of policies and procedures currently in effect.
14. Does the Board assign a reference number to the referrals/cases they receive? Is a log of complaints maintained? Approximately how many has the Board received in the last several years.
14. The Board assigns a reference number to its advisory opinions. The Board of Ethics has not received any complaints during the audit period that warranted an investigation, and thus has not maintained a log of complaints.
15. Does the Board of Ethics receive queries on applicants for County positions (i.e. from the Civil Service Commission, Human Resources or County Departments) regarding potential conflicts of interest or nepotism concerns?
15. From time to time, the Board of Ethics has received queries on applicants for County positions (i.e. from the Civil Service Commission, Human Resources or County Departments) regarding potential conflicts of interest or nepotism concerns.
16. Do County departments such as the Office of Human Resources, the Civil Service Commission or the County Attorney's Office assist the Board with research for inquiries/investigations or opinion drafting?
16. From time to time, County departments such as the Office of Human Resources, the Civil Service Commission or the County Attorney's Office assist the Board with research for inquiries/investigations or opinion drafting.

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17. How does the Board of Ethics review/investigate County officers' and employees' disclosure of potential conflicts of interest? Are records of each review retained?
17. The Board renders confidential advisory opinions to County officers and employees regarding their actual and potential conflicts of interest. In doing so, the Board conducts such review and investigation as it deems warranted in each particular case.
18. Can you advise us of the political parties represented by each Board Member? Section 10a of the Code of Ethics states "not more than two (2) board members shall be in the same political party".
18. The Board of Ethics objects to this question. The political party affiliation of Board members is beyond the scope of the audit as described in your Engagement Letter, dated July 10, 2018 (*"On April 9, 2018, the Office of the Nassau County Comptroller commenced a Limited Review of Hiring Practices and Related Parties (Nepotism) in Nassau County Government. Hiring Practices (hiring practices with regard to related parties) and conflicts of interest (interest based on relationships) is incorporated in the Nassau County Code of Ethics, as such the Board of Ethics will be included in our review."*)

The political party affiliation of all persons registered to vote in the County of Nassau is available from the Nassau County Board of Elections. The Board of Ethics membership complies with the requirements of Code of Ethics Section 10(a) (excluding the County Attorney, not more than two members belong to the same political party).
19. Please arrange for the new Board of Ethics members to be interviewed by the Audit team to inform us how they found out and applied for the open position on the Board.
19. The Board of Ethics objects to this request. The means by which the Board members learned of vacancies and the process by which they came to be appointed is beyond the scope of the audit as described in your Engagement Letter, dated July 10, 2018 (*"On April 9, 2018, the Office of the Nassau County Comptroller commenced a Limited Review of Hiring Practices and Related Parties (Nepotism) in Nassau County Government. Hiring Practices (hiring practices with regard to related parties) and conflicts of interest (interest based on relationships) is incorporated in the Nassau County Code of Ethics, as such the Board of Ethics will be included in our review."*)

Your questions regarding the means by which Board members came to be appointed should be directed to the appointing authority.

In a letter dated July 24, 2018, the Board's counsel advised the Director of Field Audit that he had been designated by the Board to serve as its liaison in connection with this audit, and requested that future communications be directed to him. Likewise, communications from the Board will be made through its counsel.
20. Can you explain the appointment process for a position on the Board of Ethics? Are the candidates provided with a packet of information on duties and responsibilities, for example the Code of ethics booklet?

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21. The Board of Ethics objects to this request. The process by which they came to be appointed, and the information provided to them prior to their appointment is beyond the scope of the audit as described in your Engagement Letter, dated July 10, 2018 (“*On April 9, 2018, the Office of the Nassau County Comptroller commenced a Limited Review of Hiring Practices and Related Parties (Nepotism) in Nassau County Government. Hiring Practices (hiring practices with regard to related parties) and conflicts of interest (interest based on relationships) is incorporated in the Nassau County Code of Ethics, as such the Board of Ethics will be included in our review.*”)

Your questions regarding the means by which Board members came to be appointed should be directed to the appointing authority. All Board members are provided with a copy of the conflict of interest booklet and other information and materials upon their appointment to the Board.

Very truly yours,

Steven G. Leventhal

Steven G. Leventhal

cc: Members and Secretary, Board of Ethics

APPENDIX E – Advisory Opinions from Comparable Board of Ethics

STATE OF NEW YORK: COUNTY OF SUFFOLK
SUFFOLK COUNTY BOARD OF ETHICS

-----X

In the Matter of the Inquiry of

██████████

-----X

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2018-7
April 4, 2018

NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL

Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules. Unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.

Summary: A Suffolk County Elected Official has inquired if he can accept an invitation to the Economic Opportunity Council of Suffolk, Inc., which is a non-for-profit 501(C)(3) minority community based organization incorporated in the State of New York. The invitation is for a reception in the Requestor’s honor as the “newly elected ████████ of Suffolk County”.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77.

Procedural History: Fact finding concluded on 4/3/2018 and the Board vote occurred within the 45 days under Suffolk County Code occurring on 4/4/2018. The Board determined by majority vote that the proposed future conduct is an enumerated exemption in the law and is permissible.

Opinion: A Suffolk County Elected Official has inquired if he can accept an invitation to the Economic Opportunity Council of Suffolk, Inc., which is a non-for-profit 501(C)(3) minority community based organization incorporated in the State of New York. The invitation is for a reception in the Requestor’s honor as the “newly elected ████████ of Suffolk County”. (*Requestor’s Exhibit-1*).

Suffolk County Code, § 77-5, “Exemptions” states:

“This article (prohibited conduct) shall not prohibit:

- G. An elected official from accepting an invitation to, and attending and participating in, an event sponsored by a community group or organization.”

As the facts presented set forth that, “the Economic Opportunity Council of Suffolk, Inc., which is a non-for-profit 501(C)(3) minority community based organization”, the Board finds that the invitation fits the enumerated exemption.

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2018-7
April 4, 2018

CONCLUSION

Accordingly, the Board finds that pursuant to Suffolk County Code, the requested future conduct, as described herein, is permissible.

Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the requester shall have 15 business days from the time this Advisory Opinion has been rendered (excluding Saturday, Sunday, or a legal holiday) to file a request for reconsideration supported by new material facts submitted to the Board.

The forgoing is the opinion of the Board.

Dated: Great River, New York
4/4/2018

Eric A. Kopp - Chair

APPENDIX E – Advisory Opinions from Comparable Board of Ethics

New York State Ethics Commission

Advisory Opinion No. 05-1: Conditions under which a State employee may accept a discount on goods or services.

INTRODUCTION

The following advisory opinion is issued in response to two separate questions regarding whether State officers and employees may accept broad-based commercial discounts from private companies. The first question is submitted by [] an attorney at the Office of Temporary and Disability Assistance (“OTDA”). She asks whether an OTDA employee may accept personal discounts of goods and services offered by a telecommunications company, Sprint PCS, that provides wireless telephone service to her agency. The second question is submitted by [] an employee of OTDA, who inquires whether he may obtain a hotel room for personal use at the government rate where the hotel management is aware that he is not traveling on government business. Because the discounts at issue are broadly available to all State employees and there is no indication that the companies involved intend to influence any employee in the performance of his or her public duties, the Commission concludes that the discounts may be accepted.

BACKGROUND

A. The Wireless Telephone Discount

Sprint PCS (“Sprint”) provides wireless telephone services for OTDA and other State agencies through a contract approved by the State Office of General Services. The contract was signed on June 1, 2004. In September 2004, Sprint introduced a national discount plan for all government employees. The plan gives a 15 percent discount on one’s personal Sprint bill to any federal, State or local government employee, nationwide, including any employee of a public school or public university.¹ Shortly thereafter, Sprint made a mass mailing to all New York State employees in which it announced (i) that it had been designated as an approved State contractor and (ii) that State employees could secure a 15 percent discount from their personal Sprint bill.² Employee interest prompted [the first State employee] to inquire whether OTDA employees could accept the 15 percent discount consistent with the Public Officers Law.

B. The Hotel Room Discount

According to [the second State employee], he is able to receive a room discount, worth as much as \$70 per day, by showing his State identification at the time of check in, even when he advises hotel management that he is not traveling on official State business. To confirm his observation, the Commission staff surveyed several major lodging chains as to their discount policies. Although policies vary widely, some hotels do, in fact, offer government employees discounts when they are traveling on personal business. The question then is whether a State employee may accept such a discount.

APPLICABLE STATUTES

APPENDIX E – Advisory Opinions from Comparable Board of Ethics

Public Officers Law §73(5) provides:

No statewide elected official, state officer or employee, member of the legislature or legislative employee shall, directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

Portions of the State’s Code of Ethics, contained in Public Officers Law §74, are applicable to gifts in certain circumstances. The provision that sets forth the rule with respect to conflicts of interest is found in subdivision (2), which reads as follows:

No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

Public Officers Law §74(3) recites the standards applicable to conflicts of interest for State officers and employees. Relevant to this discussion are the following subsections:

3. Standards.

....

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

....

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

....

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

DISCUSSION

The questions presented raise issues under §§73(5) and 74(3)(d)-(h) of the Public Officers Law. The former provision prohibits public employees from receiving “any gift having a value of seventy-five dollars or more under circumstances in which it could reasonably be inferred that the gift was intended to influence [the employee], or could reasonably be expected to influence him, in the performance of his official duties.” Under Advisory Opinion No. 94-16, the Commission has made clear that a “gift” includes anything of value given to a State officer or employee, including “a discount.” The Opinion also makes clear that as a general rule, a gift from a disqualified source -- one that “does business with, seeks to contract with or has contracts with a State agency with which the State officer or employee is employed or affiliated” -- of more than \$75 is per se impermissible. Finally, the Opinion emphasizes that “during any twelve-month period” gifts that “individually are worth less than \$75 but in the aggregate are equal to or exceed a value of \$75 meet[] the statutory threshold.”

Mechanical application of these principles to a discount plan such as that offered by Sprint might lead one to conclude that an OTDA employee who accepts the discount violates §73(5). A discount is a gift; Sprint is a prohibited source for OTDA, since it does business with the agency; and the discount is worth more than \$75 on an annual basis. For the Commission to follow a mechanical approach, however, would be mistaken. Where a discount is made available broadly to all State employees and the offeror’s purpose is merely to solicit a large group of potential customers, there is no realistic possibility that the offeror is seeking to influence any governmental decision or to reward any employee for any official action. Under such circumstances, it seems inconceivable that the Legislature intended for §73(5) to be read to prohibit an employee from accepting such a discount.

The same conclusion applies when such discounts are considered under §74(3), which prohibits an employee, inter alia, from securing “unwarranted privileges or exemptions for himself or others.” It is a common business practice for vendors to offer discounts to large groups to increase market share -- to gain more in volume than is lost in price. Lawyers who join bar associations, union employees, teachers, students, senior citizens, and the like are regularly solicited to switch brands to gain price discounts. No one would claim that a lawyer who availed herself of a discount on a rental car that was available to all members of a State Bar Association had gained an unwarranted privilege based on her status as a lawyer. Similarly, where a discount plan is broadly available to all government employees, no one could fairly conclude that the employee had improperly exploited his government position by accepting the discount or was engaged in conduct that could raise a suspicion that he was violating the public trust. The reality is that the employee is being offered the discount because he is a member of a large group and not because of the performance of his public duties.

Notably, other ethics agencies that have considered the issue have reached the same conclusion. The federal government, to which the Commission has frequently looked for guidance, specifically exempts from its definition of “gift” any “commercial discounts . . . available to the public or to a class consisting of all government employees.” 5 C.F.R. §2635.203(b)(4). Discussing this provision, the federal Office of Government Ethics (“OGE”) has noted that:

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[U]nder this exclusion employees may accept discounts on automobile or hotel rates that are offered to all Government employees. In contrast, the exclusion does not cover discounts or benefits to subgroups of employees, such as free magazine subscriptions offered to all agency field inspectors . . . or discounts on automobiles if the offer is extended only to United States diplomats.

See, OGE Informal Opinion Letters 92x26 and 94x19. See also, 5 C.F.R. §2635.204(c) (prohibiting discounts that discriminate among government employees “on a basis that favors those of higher rank or pay”). The point here is obvious: although broad-based discounts do not create a risk that the offeror is seeking to influence government action or can be viewed as an unwarranted privilege, more narrowly tailored discounts may have that purpose and can create the impression that the offeror is hoping that favored employees will reciprocate in some way.³

The conclusion that broad-based commercial discounts to government employees do not raise ethical concerns also finds support in the decisions of the City of New York Conflicts of Interest Board and the Commonwealth of Massachusetts State Ethics Commission. The former has opined that because of its “‘generalized’ nature” no violation of the City’s ethics law would likely result “when a gift is extended to all City employees, for example, the annual offer during the holidays of a discounted ticket to Radio City Music Hall.” Advisory Opinion 2000-04, at n. 8. And the latter has concluded that the Massachusetts conflict-of-interest law allows government employees to accept a discounted “government rate” for personal cellular telephone service. CMSEC EC-COI-95-5. In so ruling, the Massachusetts Commission observed: “[a] broad-based and uniform employee discount precludes any appearance that particular employees have been so selected because they may be in a public position where they can benefit the giver.” Id.

Against this backdrop, the Commission has no difficulty in concluding that a State employee may participate in the Sprint national discount plan. That plan is sufficiently broad-based to allay concerns that the discount is offered to influence employees in the performance of their public duties. It is available not only to all state employees (which would be sufficient in itself) but to federal and city government employees as well. As such, it cannot be considered a prohibited gift (for employees whose agencies do business with Sprint) or an unwarranted privilege of government service.

The same holds true for a discount to government employees offered by hotels when an employee is on personal travel. The federal OGE has reached this very conclusion, reasoning that because “the discount is to a class as large and diverse as all Government employees, there is little likelihood that the [hotel] is seeking to gain influence or to supplement employees’ salaries.” OGE Memo 85 x 13. In approving the practice, the OGE, however, emphasized that “the employee may not misrepresent the purpose of the travel, i.e., say that he or she is on business, in order to get rates that are not available for personal travel.” Id. The Commission believes that New York employees should go one step further. In such situations, a State employee must affirmatively represent to hotel management that he or she is on personal business. Not to do so would create too high a risk that the employee has improperly gained a benefit to which he or she was not otherwise entitled. If, knowing that an employee is traveling

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on personal business, a hotel chooses to extend a discount as part of its standard practice, the State's ethics law are not offended.

CONCLUSION

For these reasons, the Commission concludes that a State employee may accept a broad-based commercial discount that is not intended (or could not reasonably be perceived as being intended) to influence the employee in the performance of his or her public duties.

This opinion, until and unless amended or revoked, is binding on the Commission in any subsequent proceeding concerning the persons who requested it and who acted in good faith, unless material facts were omitted or misstated by the persons in the request for opinion or related supporting documentation.

All Concur:
Paul Shechtman, Chair
Robert J. Giuffra, Jr.
Carl H. Loewenson, Jr.
Lynn Millane
Susan E. Shepard, Members

Dated: March 28, 2005

End notes

- 1 The discount could save employees anywhere from \$63 to \$207.00 annually depending on their service plan.
- 2 Although the mass mailing, unfortunately, linked Sprint's designation as an approved State contractor with its nationwide discount plan, the two are unrelated. The award of the state contract was not, to the Commission's knowledge, influenced in any way by the possibility of discounts to employees on their private bills.
- 3 OGE gives this example of a prohibited discount: For example, a manufacturer of air-conditioning equipment offers discounts to certain "key" employees of Government-owned utilities who might be asked by utility customers for recommendations on various types of air-conditioning equipment. Because the motivating factor behind the manufacturer's offer is to encourage the employee to look favorably on it and to promote its product among the customers, the Federal Government employee should not accept the discount.

APPENDIX F – Executive Director Job Description

10/31/2018

[https://apps2\[REDACTED\].gov/civilservice/specs/9309spe.html](https://apps2[REDACTED].gov/civilservice/specs/9309spe.html)

EXECUTIVE DIRECTOR OF THE [REDACTED] BOARD OF ETHICS

9309

DISTINGUISHING FEATURES OF THE CLASS

Under the direction of the [REDACTED] Board of Ethics, an employee in this class is responsible for carrying out and implementing the policies of the Board. The incumbent acts in the name of the Board between meetings and is expected to exercise a considerable amount of independent judgment and initiative. Responsibilities include administration, research, report writing for tasks associated with the review of ethics complaints, investigations, review of financial disclosure statements, and the development and conduct of training programs. Duties require absolute discretion and confidentiality. Work is reviewed through conferences, written reports and the achievement of desired objectives. Does related work as required.

TYPICAL WORK ACTIVITIES

Reports directly to and is responsible for carrying out the policies of the Board of Ethics;
Responsible for daily management of the office, including procurement and payment, maintenance of confidential records, receipt of all materials received by the Board, preparation of correspondence and reports and dealing with other administrative units of county government;

Reviews all financial disclosure statements, assesses completeness, and satisfies statutory deadlines for notifications and compliance with county laws;

Develops and delivers ethics training to elected officials, department heads, county board members and employees of the County;

Receives, interviews, investigates and analyzes complaints of ethics violations, and presents recommendations to the Board to resolve ethics violations;

Handles requests for ethics opinions from elected officials, department heads, county board members and employees of the County, which involves receiving, investigating, researching, reporting, tracking, and making recommendations to the Board;

Investigates complaints alleging any violations of pertinent laws as directed by the Board;

Drafts rules and regulations, policies, procedures, motions and other legal documents as directed by the Board;

Works with Board, to draft recommended budget and annual reports to the Legislature and County

Executive;

Assists the Board in conducting meetings and hearings; prepares meeting agendas, legal notices and media advisories, minutes and transcripts, and records and files Board decisions;

Attends all meetings and hearings of the Board;

As required or directed by the Board, communicates with the media and the public;

Oversees and administers access to the records of the Board.

FULL PERFORMANCE KNOWLEDGES, SKILLS, ABILITIES AND PERSONAL CHARACTERISTICS

Knowledge of the functions and operations of County and local governments and the interrelationships between the various levels of government; knowledge of ethics procedures and laws, and familiarity with municipal laws; knowledge of the principles, practices and procedures of public administration; ability to establish and maintain effective working relationships with official of other departments and jurisdictions, legislators and representatives of agencies at the different levels of government; ability to communicate and deal effectively with others; ability to perform fact-finding investigations, including interviews, statement writing, document collection, and research; ability to prepare comprehensive reports and analyses; ability to draft legal opinions; ability to balance varied workloads, unexpected assignments, and competing deadlines; ability to express oneself clearly and concisely, both orally and in writing; initiative; tact; judgment; leadership; physical condition commensurate with the demands of the position.

MINIMUM QUALIFICATIONS

Possession of a license to practice law before the Bar of the State of New York and four (4) years of experience in the practice of law, at least two (2) years of which must have been in the field of ethics, conflicts of interest, prosecution, regulatory compliance, professional discipline or a related field, and include experience in adult education or training.

6/28/12

[REDACTED]
NON-COMPETITIVE
Review 2/10/15

[https://apps2\[REDACTED\].gov/civilservice/specs/9309spe.html](https://apps2[REDACTED].gov/civilservice/specs/9309spe.html)

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Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

Appendix G contains an analysis of the Board of Ethics March 7, 2019 response to the Draft Audit report and the Auditors replies to the responses. The Board of Ethics full response letter as submitted is included in Appendix H.

Auditors' Follow-up to Nassau County Board of Ethics Introductory Comment

According to the Institute of Internal Auditors, auditing is a cornerstone of good public sector governance. By providing unbiased, objective assessments of whether public resources are managed responsibly and effectively to achieve intended results, auditors help public sector organizations achieve accountability and integrity, improve operations and instill confidence among citizens and stakeholders.⁵¹ An audit by the Nassau County Comptroller provides an important view into a public sector entity like the Board of Ethics, to report to County residents and taxpayers if the Board is operating responsibly and transparently to achieve their goals objectively, efficiently, economically and ethically.

Nassau County Board of Ethics comments on the Executive Summary; Introduction

As the draft audit report acknowledges, the current Board of Ethics-which has only been fully constituted since August 2018 has been actively working on updating its policies and procedures, and implement new practices to enhance its transparency and effectiveness through a variety of new initiatives.

Auditors' Follow-up to Nassau County Board of Ethics Introductory Comment

The time period covered by our audit was January 1, 2016 through January 11, 2019. We acknowledge that the current Board of Ethics was only recently constituted and has been actively working on updates to their policies, procedures and website.

The Board appeared to respond generally to the audit findings rather than the audit recommendations. Both the Audit Protocol provided at the beginning of the audit and the Exit Letter which accompanied the draft report requested that the auditee respond to the recommendations.

The Board of Ethics was invited to attend an Exit Conference where the findings and recommendations could be reviewed and discussed, however they did not accept this opportunity.

⁵¹ "Public sector definition and the role of Auditing in Public Sector Governance", Institute of Internal Auditors/Global, 2012.

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

Nassau County Board of Ethics comments on the Executive Summary; Introduction

The draft audit report states that the Comptroller is engaged in a "nepotism audit" of the County and has chosen to focus first on the Board of Ethics. Although the Board of Ethics welcomes discussion of its work, it is important to make clear that the Board of Ethics has no involvement in the appointment of County officers and employees. In fact, the Board of Ethics only becomes involved in questions of nepotism or potential nepotism in three circumstances: first, when a county officer or employee requests ethics advice concerning potential nepotism; second, when nepotism is self-reported on an annual statement of financial disclosure, or third, when nepotism is the subject of a complaint. The Board of Ethics has, from time to time, received requests for advisory opinions from conscientious county officers and employees inquiring whether a particular personnel action would constitute prohibited nepotism, and whenever it is asked to do so, the Board of Ethics issues comprehensive advisory opinions advising those officers and employees on the appropriate course of action in light of the facts presented and the applicable authorities. The current Board of Ethics has not learned of any instance of prohibited nepotism through the financial disclosure program or through a complaint; however, if the Board were to learn of any violation of the Code of Ethics, it would take appropriate action.

If the Office of the County Comptroller becomes aware of any examples of nepotism involving current County officers and employees, the Board of Ethics expects the Office of the County Comptroller to immediately file a complaint so that the Board of Ethics can take appropriate action.

Auditor's Follow Up to Nassau County Board of Ethics Introductory Comment

Under the prior and current Code of Ethics, as enacted by the Nassau County Legislature, officers and employees **may not: 1) hire or induce others to hire their relatives, and 2) they may not directly supervise or evaluate their relatives unless an exemption is granted through written approval by the Board of Ethics.**

The Comptroller's Office selected the Board of Ethics for the first phase of its audit of nepotism because while the Board is not involved in the appointment of Nassau County employees or officers, it sets the ethical standards that all County departments and agencies should follow by implementing the Code of Ethics.

The Comptroller's Office is continuing its review of Nepotism and will provide the Board with the finalized Audit Reports that detail our Audit Findings and Recommendations. The Comptroller's Office must follow the United States Government Accountability Office ("GAO") government auditing standards regarding confidentiality and report quality assurance which may not allow for the immediate divulgence of information disclosed during the audit.

AUDIT FINDING (1)

(1) The Auditors Found a Lack of Transparency Regarding the Meetings of the Board of Ethics

Audit Recommendation:

The Nassau County Board of Ethics should follow both “Governmental Best Practices” and “NYS Open Meetings Law.” They should operate in an open and transparent manner in all dealings including meeting announcements, and procedures so that the public may observe the performance of the Board, its deliberations and its decisions. Having an Ethics Board which is easily accessible to both employees and the public is important to regaining the public’s trust in Nassau County’s governmental operations.

Nassau County Board of Ethics Response to Recommendation (1)

The Board of Ethics believes that compliance with the Open Meetings Law is not only required by law, but allows the Board of Ethics to better accomplish its mission. Accordingly, the Board of Ethics meetings are always open to the public and the public is always notified of meetings in advance.

The members of the Board of Ethics are uncompensated volunteers, each of whom have other employment, and therefore often must meet before the start of the regular work day. Because the meetings are often held before the start of the work day, the Board of Ethics makes arrangements with building security to ensure that the building is open to the public. This requires security to arrive earlier than they typically do, and as a redundancy to ensure access, the Board secretary also monitors the building entrance for any members of the public wishing to attend the meeting. These steps have worked, and the audit staff was always admitted to the building and attended all meetings of the Board of Ethics that occurred during the pendency of the audit field work.

At each meeting, agendas were either offered to the audit staff without request or distributed upon request.

The Open Meetings Law does not require that minutes be approved. See, New York Committee on Open Government, Advisory Opinions, OML-AO-2225, OML-AO-2425, OML-AO-2466, OML-AO-2525, OML-AO-2664, OML-AO-2851, OML-AO-2906, OML-AO-3153, OML-AO-3284, OML-AO-4845, OML-AO-5241, OML-AO-5341, OML-AO-5400.

Nevertheless, the Board reviews and approves minutes from previous meetings even though it is not required to do so.

It is the consistent practice of the Board of Ethics to state its reason for adjourning to executive session (which, in most cases, is to discuss requests for confidential ethics advice). On three occasions, the reason was stated in counsel's introductory remarks made at the start of the meeting. Counsel noted that the Board would conduct its public business first, and then adjourn to executive session to discuss ethics inquiries involving particular individuals. In its future meetings, the Board of Ethics will state the reason for adjournment into executive session at the time the motion is made and approved.

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

Auditors Follow Up Comments to Recommendation (1)

The auditors have attended all Board of Ethics Meetings beginning from May 1, 2018 through March 25, 2019. As stated in Audit Finding 1, through the first three meetings Auditors attended, agendas were not distributed, prior meeting minutes were not available or discussed and the Board adjourned into Executive Session without a reason stated, which is required by the Open Meetings Law.

Auditors acknowledge public agendas were distributed and the acceptance of prior meeting minutes were done at the December 2018, January 2019, February 2019 and March 2019 meetings, but not in prior meetings.

The Board's response to this Finding states the Counsel to the Board provided the reason for Executive Session at the beginning of the public meeting. The Counsel is not a member of the Board of Ethics, thus he cannot give a reason to go into Executive Session, and this must be done by the Board Members, as required by the Open Meetings Law.

The Board of Ethics response acknowledges that the Board violated the Open Meetings Law by stating "in its future meetings, the Board of Ethics will state the reason for adjournment into executive session at the time the motion is made and approved."

In February 2019, the Board scheduled their public meeting for 7:00 am, which was not conducive to transparency and convenient to the public. The March 20, 2019 & March 25, 2019 meetings started at 7:30 AM. While we understand that the Board members are volunteers and have jobs they need to get to, the Board meetings should be scheduled at a time conducive to public attendance, especially at a time when the County is working to reestablish the public's trust in government operations.

We reiterate our Recommendation that the Board of Ethics should operate in an open and transparent manner in all dealings so that the public may observe the performance of the Board, its deliberations and its decisions. For more information on The Open Meetings Law and Board of Ethics, See Appendix I "Boards of Ethics: Public Disclosure?" By Robert J. Freeman, Executive Director of the New York State Committee on Open Government.

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

AUDIT FINDING (2)

(2) The Nassau County Board of Ethics Website is Inadequate and is Ranked Near the Bottom of the Nine Comparable Websites Examined by the Auditors

Audit Recommendation:

We recommend the Nassau County Board of Ethics immediately work on improving their website to make it more informative for County Officers, employees, vendors and taxpayers aspiring to be as informative as New York State, New York City and Suffolk County. An informative and easy to navigate website will provide an important resource for the public to keep a check on government operations.

Nassau County Board of Ethics Response to Recommendation (2)

The Board of Ethics is actively engaged in updating its presence on the County website and has made improvements to the website, making information about the Board of Ethics more accessible to the County workforce. These efforts by the Board of Ethics have required, and continue to require, significant coordination among the Board of Ethics, the Office of the County Attorney and the Information Technology Department.

Recent additions and upgrades to the Board of Ethics website, many of which are not acknowledged in the draft audit report, include the following:

- A new online form for submitting requests for advisory opinions electronically.*
- A new online form for submitting complaints electronically, with the option to submit complaints anonymously.*
- The names and biographies of members of the Board of Ethics.*
- Redacted copies of advisory opinions that the Board of Ethics determined could be published while protecting the identity of the requestor and posted those advisory opinions on its website. The Board of Ethics believes that it is helpful to make redacted advisory opinions public whenever possible, notwithstanding the need to carefully review and redact a significant number of advisory opinions. The Board of Ethics will continue to post redacted advisory opinions on its website when it believes it can do so while protecting the identity of the requestor.*
- All policies and procedures adopted by the Board of Ethics. This includes: (1) policies and procedures for determining who must file Annual Statements of Financial Disclosure; (2) policies and procedures for conducting adjudicatory proceedings and appeals; and (3) policies and procedures for reviewing annual disclosure forms.*
- The Board of Ethics has posted a portal on its website to make it easier for the public to make requests pursuant to the Freedom of Information Law.*

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

The Board of Ethics website also includes:

- *The Code of Ethics.*
- *A "plain language guide" to the Code of Ethics.*
- *A contact phone number, mailing address, and email address.*

The draft audit report proposed a rubric for the purpose of assigning "rankings" of Boards of Ethics websites and states that Nassau County Board of Ethics is ranked the second lowest among the seven counties selected for comparison purposes. The draft audit report evaluated an old and outdated version of the Nassau County Board of Ethics website for the purpose of making this comparison. Based on the rubric set forth in the draft audit report, the current Nassau County Board of Ethics website is ranked the second highest of the seven counties. The only county with a higher-ranked website is Suffolk County, which, unlike Nassau County, has full time staff.

The Board of Ethics believes that a comprehensive and accessible website allows it to better carry out its mission, and has plans to continue to improve its website and online presence over the coming months.

In addition, the Board of Ethics, with the assistance of the County Executive's Office and the Information Technology Department, has developed, and will soon implement, a program for the secure electronic filing of Annual Statements of Financial Disclosure. This important development will reduce the administrative burden of distributing, collecting and reviewing the disclosure forms. It will permit the Board to determine electronically whether any person required to file a disclosure form has failed to do so, whether the filed disclosure forms are complete, and whether county officers and employees have secondary employment with, or an ownership interest in any county vendor, contractor or consultant.

Auditors Follow Up Comments to Recommendation (2)

While the Board of Ethics submitted their response to the Comptroller's Office draft report on March 7, 2019, stating that a number of changes had been made to the Board's website, all of those improvements have not yet been made. However, additional items have been added and an analysis of the current Board website using the Auditors rubric of rankings repositions the Board's website as second highest of those ranked, after Suffolk County.

The Auditors concur that the **current** Board of Ethics has been actively engaged in modernizing the website and has made significant progress since being appointed in 2018. We support the changes made to date, and look forward to seeing further improvements to the website going forward.

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

AUDIT FINDING (3)

(3) Information and Forms Needed to File a Complaint or Violation were Not Made Accessible by the Nassau County Board of Ethics

Audit Recommendations:

We recommend that the Nassau County Board of Ethics create a written procedures document to be displayed on the public webpage with guidance on how to submit a complaint or violation, as well as an actual complaint form in order to facilitate the filing of a complaint.

Nassau County Board of Ethics Response to Recommendation (3)

As noted above, the Board has prepared and posted forms and instructions for requesting ethics advice and submitting ethics complaints on its website. Although no statute or authority requires that the Board of Ethics prepare forms for requesting advice or filing complaints, the Board believes that doing so is valuable because it makes it easier for county officers and employees to request advice or file ethics complaints.

Auditors Follow Up Comments to Recommendation (3)

As of March 26, 2019, the Board of Ethics has added forms, but no instructions for requesting ethics advice and submitting ethics complaints on the website.

We reiterate that the Board of Ethics should add a procedure to the website with guidance on how to submit a complaint or violation as well as an actual complaint form.

AUDIT FINDING (4)

(4) The Nassau County Code of Ethics is Not Posted or Promoted in County Buildings or Key County Locations for Officers, Employees and Vendors

Audit Recommendations:

We recommend that the Board of Ethics ensure officers, employees and vendors are knowledgeable in the Ethics Laws and have easy access to obtain additional information by:

- a) Displaying the code of ethics in all County Departments in both employee and public areas; and
- b) Adapting or creating posters, which include information on the prohibition of the hiring or supervision or relatives (nepotism) or using other methods to convey the Ethics Laws to the employees and vendors of Nassau County.

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

Nassau County Board of Ethics Response to Recommendation (4)

The Board of Ethics believes that educating County officers and employees on their ethical obligations is a central function of the Board of Ethics. The Code of Ethics, along with a plain language guide, is therefore made available to all County officers and employees on the Board of Ethics website and is provided to all new hires. The Board of Ethics has recommended to the County Executive that the Code of Ethics be posted in County buildings. The Board of Ethics is diligently working to make it easier for County officers and employees to learn about their ethical responsibilities through its expanded online presence and innovative ethics training, and will continue to make this a priority in the coming months and years.

Auditors Follow Up Comments to Recommendation (4)

The hard copy of the Code of Ethics that is currently given to new hires in Nassau County by departmental Human Resources representatives is not the most current version. New hires are given the plain language guide dated 2009, however the Code of Ethics was last amended in July 2017.

We concur with the Board's response regarding posting the Code of Ethics in County Buildings.

We reiterate and urge that consideration be given to creating posters similar to those in Finding (4) and using other methods to promote the Code of Ethics and anti-nepotism policies, and providing easy to understand guidance to employees as well.

AUDIT FINDING (5)

(5) The Board of Ethics has Operated with Less Than the Required Five Members and Consistently Lacked Diversity

Audit Recommendations:

We recommend on an ongoing basis:

- a) The Board/Legislature/County Executive ensure the full membership of five Board of Ethics Members is maintained by appointing new member(s) within sixty (60) days, as it states in the Code of Ethics; and
- b) The Board/Legislature/County Executive look for diversity in gender and occupational background for Board selection.

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Nassau County Board of Ethics Response to Recommendation (5)

The current Board has been fully constituted since August 2018. At no time in the past thirty years has the Board of Ethics lacked a sufficient number of members to establish a quorum, convene meetings and conduct its business.

The membership of the Board of Ethics has been diverse in gender, ethnicity, age, professional background, and experience. Its members have included four women, one African - American, three retired judges, a former prosecutor for the Grievance Committee of the 10th Judicial District, a law school dean, and a past-president of the Nassau County Bar Association, among others.

The Board of Ethics disagrees with the proposition, attributed in the draft report to the chairperson of another board of ethics, that the "majority of advisory requests or complaints are not complex in terms of legal purposes." This statement, belied by logic and experience, reflects the need for ethics training, even among the members of local municipal boards of ethics. The Nassau County Board of Ethics is diligent and thorough in its analysis of the legal issues raised by the inquiries and complaints that it considers. It regularly employs a three-step analysis to determine whether, under the circumstances presented, the contemplated conduct would give rise to a prohibited conflict of interest. The Board considers: (i) whether the contemplated conduct would violate Article 18 of the New York General Municipal Law, (ii) whether the contemplated conduct would violate the Nassau County Code of Ethics, and (iii) whether the contemplated conduct would give rise to a prohibited appearance of impropriety under common law principles.

At no time was the Board of Ethics in violation of Local Law 4-2007 (no member of the Board of Ethics, other than the County Attorney, may be a municipal officer or employee) or Local Law 6-2017 (no member of the Board of Ethics may hold any political party office). Following the adoption of Local Laws 4 and 6 of 2017, two now former members of the Board, then serving as holdovers, were political party officials, and one of the two was also a municipal employee. However, both former Board members were qualified to serve at the time of their appointment, and thus properly served as holdovers until the appointment of their successors.

Auditors Follow Up Comments to Recommendation (5)

The Auditors do not believe the current Board provided backgrounds that are diverse, as all backgrounds are related to law in some capacity. Other Boards of Ethics have members with backgrounds including clergy, retired government workers, those in the medical field, etc. **The last time the Nassau County Board of Ethics had a female member was almost a decade ago, in 2010**, since then the Board has been all males. A list of the Nassau Board of Ethics members between 1/1/2009 and the present is shown below, and indicates when the Board was operating with less than the full number of members (five).

We do not agree with the Board's response that no member of the Board, other than the County Attorney, was a member of the Board in violation of Local Law 4-2007. During the period of June 2010 through December of 2017, one of the Board members was an

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employee of the Nassau County Board of Elections and was listed in the County's payroll and personnel system as an active County employee.

Nassau County Board of Ethics Members	
01/01/2009 - 07/29/2009	
1	Lorna Goodman, Nassau County Attorney
2	Martha Krisel
3	E. Christopher Murray
4	Andrew Turro
07/30/2009 - 12/31/2009	
1	Lorna Goodman, Nassau County Attorney
2	Martha Krisel
3	Andrew Turro
01/01/2010 - 04/07/2010	
1	Martha Krisel
2	Andrew Turro
3	Stephen Turman (Appointed 12/24/09)
4	John Ciampoli, Nassau County Attorney
5	Keith Corbett (Leg. Approved 1/8/10)
04/08/2010 - 06/06/2010	
1	Andrew Turro
2	John Ciampoli, Nassau County Attorney
3	Stephen Turman
4	Keith Corbett
06/07/2010 - 04/07/2012	
1	Andrew Turro
2	John Ciampoli, Nassau County Attorney
3	John Ryan
4	Stephen Turman
5	Keith Corbett
04/08/2012 - 08/07/2012	
1	John Ciampoli, Nassau County Attorney
2	John Ryan
3	Stephen Turman
4	Keith Corbett
08/08/2012 - 04/07/2013	
1	Owen Smith
2	John Ciampoli, Nassau County Attorney
3	John Ryan
4	Stephen Turman
5	Keith Corbett
04/08/2013 - 05/10/2013	
1	Owen Smith
2	John Ciampoli, Nassau County Attorney
3	John Ryan
4	Stephen Turman
5	Albert D'Agostino
05/11/2013 - 11/30/2013	
1	Owen Smith
2	John Ciampoli, Nassau County Attorney
3	John Ryan
4	Albert D'Agostino
12/01/2013 - 05/20/2017	
1	Owen Smith
2	Carnell Foskey, Nassau County Attorney
3	John Ryan
4	Albert D'Agostino
05/21/2017 - 12/31/2017	
1	Owen Smith
2	Carnell Foskey, Nassau County Attorney
3	John Ryan
<i>*A new Code of Ethics went into effect 07/11/17</i>	
04/23/2018 - 08/05/2018	
1	Kenneth Gartner
2	Jared Kasshau, Nassau County Attorney
3	Michael Pernick
08/06/2018 - Present	
1	Kenneth Gartner
2	Jared Kasshau, Nassau County Attorney
3	Michael Pernick
4	Daniel Palmieri
5	Christopher Devane

We stand by our finding and reiterate our recommendation that the Board / Legislature / County Executive look for diversity in gender and occupational background for Board selection.

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

Audit Finding (6)

(6) The Board did not Conduct Any Investigations or Impose Any Sanctions During the Period 2016 Through July 2018.

Audit Recommendations:

- a) the Board actively conduct investigations and consider the imposition of sanctions when appropriate;
- b) the Board provide advisory opinions when a County officer or employee, or former officer or employee requests advice regarding ethical issues relative to themselves or to the head of a County agency, the County Executive or a County Legislator;
- c) Section 2218 (10)(d) of the County Charter be amended to clarify the Board's authority to, and mandate that, the Board provide advisory opinions concerning the Code of Ethics to county department heads and elected officials regardless of whether or not such advice is related to himself or herself;
- d) the Board maintain logs of all complaints received; and
- e) the Board minutes 'open to the public' present more information to show transparency of the Board's activities.

Nassau County Board of Ethics Response to Recommendation (6)

The Board conscientiously responds to all complaints that it receives. The current Board of Ethics has been presented with only one complaint. The Board commenced an investigation, interviewed witnesses, and expeditiously took appropriate action.

The goals of the Board of Ethics are to foster public confidence in government by ensuring both the reality and the appearance of integrity, and to guide and protect honest county officers and employees so that they will be more likely to avoid unintended ethics violations. The Board of Ethics believes that these goals are best achieved through ethics advice and education. Nevertheless, the Board of Ethics has the power and duty to investigate ethics complaints, and will not hesitate to make judicious use of this power when it is appropriate and necessary to do so.

The Board of Ethics disagrees with the audit recommendation that Section 2218(10)(c) be amended to mandate that the Board provide advisory opinions to county department heads and elected officials regarding any issue upon which they seek such an opinion. (Emphasis in original). This recommendation reflects a lack of understanding of the role and function of the Board of Ethics in County government.

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

Auditors Follow Up Comments to Recommendation (6)

The Auditors disagree with this response as it is contradictory. We requested results of **investigations during the audit period January 1, 2016 through August 18, 2018**. We provided examples from news articles of ethics complaints filed with the Nassau County Board of Ethics, including a complaint lodged in June of 2017 against the former County Comptroller over hiring his sister-in-law in violation of the anti-nepotism provision of the Code of Ethics. We also have indication that the Board had received that complaint and was in the process of reviewing it at that time.

In response to the Board's comments on Auditing Finding 6 (c), we have amended the recommendation as reflected above for clarification purposes.

However, the Board counsel responded on September 7, 2018 stating: "The Board of Ethics conducted no investigations and imposed no sanctions or penalties for violations of the Code of Ethics for the period January 1, 2016 though the present date."

We stand by our finding and reiterate the Board should maintain logs of all complaints received.

AUDIT FINDING (7)

(7) The Board of Ethics Would Not Allow Auditors to View Any Nassau County Advisory Opinions

Audit Recommendations:

- a) post redacted advisory opinions on their website to help guide County officials and employees on ethical questions they may have, to assist in preventing ethical missteps before they happen; and
- b) post these opinions in an indexed, searchable manner.

Nassau County Board of Ethics Response to Recommendation (7)

The Board of Ethics has posted on its website redacted copies of those advisory opinions issued in the past year that it determined could be published with identities meaningfully protected.

The Board of Ethics takes very seriously its responsibility to protect the identity of the inquiring officers and employees and the confidentiality of the advice rendered. Ethics advice is a critical means of assisting honest County officers and employees to avoid unintended ethics violations. County officers and employees are more likely to seek ethics advice when assured that their inquiries will remain confidential. Ethics advice is most useful when it provides a detailed analysis applying the applicable standards of conduct to the facts presented. For this reason the advisory opinions rendered by the Board of Ethics include detailed analyses of the facts presented. For the same reason, redaction of the pertinent facts would render many advisory opinions meaningless. As a result, the process of selecting advisory opinions that can be

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redacted in a manner sufficient to protect the identity of the inquiring officers and employees is a time consuming task. Nevertheless, in the interest of promoting ethics education, the Board of Ethics will continue to posting redacted advisory opinions on its website whenever it is possible to do so with identities meaningfully protected.

The draft report states that advisory opinions are "usually" redacted and posted by boards of ethics, but cites only two examples, only one of which is a local municipal ethics board; and the posted advisory opinions of that board are far less detailed, and less informative to the recipient, than the advisory opinions rendered by the Nassau County Board of Ethics.

Auditors Follow Up Comments to Recommendation (7)

The Auditors note advisory opinions are now on the website. However, the redacted advisory opinions were not posted until March 8, 2019.

The response stated that the selection of advisory opinions that can be redacted is a time consuming process. Auditors note that they attended a meeting of the Board of Ethics where it was suggested that members of the Board could review all the advisory opinions in one meeting if the work was divided amongst themselves. The Counsel ultimately rejected this request and stated he and the Secretary would review and redact the advisory opinions.

The auditors examined numerous more detailed opinions posted on the Suffolk County and New York State's Board of Ethics respective websites but chose not to include more than a few samples in this report.

Appendix J includes all advisory opinions that the Board posted on their website on March 8, 2019.

AUDIT FINDING (8)

(8) The Lack of an Annual Report Denies Employees and Residents the Ability to Evaluate the Board's Roles and Responsibilities

Audit Recommendations:

- a) the Board give priority to preparing its 2017 Annual Report;
- b) annual reports be available to the employees and residents; and
- c) annual reports be posted on the Nassau County Board of Ethics website.

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Nassau County Board of Ethics Response to Recommendation (8)

As noted in the draft report, the Code of Ethics did not require the preparation of an annual report by the Board of Ethics until it was amended in July 2017. The terms of office of all members of the Board of Ethics serving in 2017 ended with the inauguration of a new administration in January 2018 and the appointment of the members currently serving. The current Board of Ethics has just completed its first calendar year in office, has informed the County Executive and the Legislature that it is engaged in preparing its annual report, has discussed its progress at public meetings of the Board attended by the audit staff, and has reported its progress to the County Executive and the Legislature.

Auditors Follow Up Comments to Recommendation 8

In September of 2017, the Counsel to Board of Ethics responded to the question list in which the auditors asked if the Board prepares an Annual Report, with the following response: "The Board of Ethics, newly constituted in 2018 pursuant to the 2017 Code, is engaged in the preparation of an annual report for the year 2017." **This report was never provided to the Auditors or discussed in public sessions of the Board meetings.**

The annual report for 2018 was due to be sent to the County Executive's office and County Legislature under the Code of Ethics no later than March 1, 2019. The Auditors attended the Board of Ethics Public Meeting February 28, 2019 and the annual report was briefly discussed, the Counsel had not yet started the annual report and was apparently unaware that there was a deadline to complete the report by March 1, which is stated in the Code of Ethics.

Auditors reiterate our recommendation that the Board prepare 2017 and 2018 Annual Reports, provide them to the County Executive and the County Legislature and post them on the Nassau County Board of Ethics website for use by employees and the public. The Suffolk County Board of Ethics prepares and publishes a comprehensive annual report, which the Nassau County Board of Ethics may consider using as a template. The Suffolk County annual reports may be found online at this web address: <https://www.suffolkcountyny.gov/agencies/ethics>.

AUDIT FINDING (9)

(9) Most County Employees Have Not Received the Updated Code of Ethics and Formal Ethics Training

Audit Recommendations:

We recommend that the Board of Ethics:

- a) Work with the Office of Human Resources and the Bureau of Printing and Graphics to ensure that all County employees receive a copy of the updated Code of Ethics Booklet and/or a link to it on the Board of Ethics' website.

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- b) Provide ethics training to the officials, attorneys, and department heads who were unable to attend previous sessions.
- c) Consider rolling out ethics training to all County employees. (The Auditors note that the training documents provided by the Counsel to the Board of Ethics, who presents the training and has extensive training expertise, were comprehensive and well written.)

Nassau County Board of Ethics Response to Recommendation (9)

Ethics advice, training and education are a vital means of achieving the goals of the Board of Ethics. New hires are provided with a copy of the Code of Ethics booklet as a part of their orientation packet. The booklet distributed to new hires contains a 2009 version of the Code of Ethics. The Code of Ethics was last amended in 2017, but those amendments did not change the code of conduct applicable to County officers and employees, except that it incorporated a requirement, already applicable to County officers and employees through the application of Article 18 of the General Municipal Law, that they disclose any interest that they may have in proposed legislation. The current Code of Ethics booklet, revised to incorporate the 2017 amendments to the Code of Ethics, is posted on the Board of Ethics website.

The Board has prepared a new, comprehensive Code of Ethics which will soon be submitted for consideration by the County Executive and Legislature. If the new Code of Ethics is adopted, the Board of Ethics will prepare a new Code of Ethics booklet containing a Plain Language Guide and a copy of the newly adopted Code of Ethics for distribution and posting on the Board of Ethics website. If the new Code of Ethics is adopted, the Board of Ethics will provide ethics training and related educational materials to assist County officers and employees in understanding their obligations under the new Code, and will post the educational materials on its website. At that time, the Board of Ethics will recommend that all County officers and employees receive ethics training.

The Board of Ethics has frequently provided ethics training to the County Attorney's office and has provided ethics training to the office of the County Executive, the Legislature, and Department Heads and their deputies.

Auditors Follow Up Comments to Recommendation (9)

We concur that the current Code of Ethics booklet, revised to incorporate the 2017 amendments to the Code of Ethics, is posted on the Board's website. However, for County employees that do not have access to a personal computer at work, particularly in departments such as the Department of Public Works, Corrections and the Department of Parks, Recreation and Museums, we reiterate our recommendation that the Board work with the Office of Human Resources and the Bureau of Printing and Graphics to ensure that all County employees receive a copy of the updated Code of Ethics Booklet and/or a link to it on the Board of Ethic's website. New employees are currently provided with, and sign for, a 2009 version of the booklet.

Due to the importance and timeliness of the subject of ethics in government, we urge that the Board offer ethics training immediately to the officials, attorneys, political candidates and department heads who were unable to attend previous sessions. **Training to human resources representatives who distribute the Code of Ethics to new employees would be helpful.**

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The Board may also consider developing training videos which employees may watch at their convenience.

We agree with the Board's determination that if a new Code of Ethics is adopted, the Board will recommend that all County officers, candidates and employees have access to ethics training.

AUDIT FINDING (10)

(10) Emails to the Board of Ethics Were Read by Individuals Not Then Associated with the Board

Audit Recommendations:

To avoid the appearance of conflicts of interest and safeguard the confidentiality of individuals who wish to communicate with them, we recommend the Board of Ethics obtain assistance from IT to limit access to their emails at their Nassau County email address to Board Members and the Board's Secretary.

Nassau County Board of Ethics Response to Recommendation (10)

In the transition of County administrations, the Board's support staff was changed. A programming delay resulted in a brief period during which the former support personnel retained access to Board of Ethics correspondence. The situation was corrected on discovery and is unlikely to recur. There is no reason to believe that the former support staff made unauthorized use of their temporary access to Board of Ethics correspondence.

Auditors Follow Up Comments to Recommendation (10)

This exception was noted in July 2018 and was brought to the attention of the County Attorney immediately, and to the Board's Counsel on August 8, 2018 during the Entrance Conference for the audit.

We are concerned that the Board's response does not indicate that an investigation was performed to identify the full period involved, and that it does not identify the corrective measures which will be taken to ensure that unauthorized access to the Board's email correspondence does not reoccur.

We repeat our recommendation that the Board obtain assistance from the Department of Information Technology to limit access to their emails at their Nassau County email address to Board Members and the Board's Secretary only, so that a reoccurrence of confidential emails being read by others does not happen again.

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AUDIT FINDING (11)

(11) The Board of Ethics did not Receive 100% Compliance with the Filing of 2017 Financial Disclosure Forms and Did Not Impose Fines on those Who Failed to Comply

Audit Recommendations:

We recommend that the Board of Ethics:

- a) Review the employment/job status of each individual/employee who did not file their 2017 Financial Disclosure Form; and
- b) For those employees who are required to file, follow-up with Department Heads/HR Reps to ensure that the forms are submitted. If the forms are not submitted after the follow-up, consider imposing appropriate penalties.

Nassau County Board of Ethics Response to Recommendation (11)

The Board of Ethics has consistently obtained 100% compliance with the financial disclosure requirements. While some filers are tardy in their compliance, all officers and employees who have been required to file disclosure forms have eventually complied. That experience is repeating itself in the current cycle, with the list non-filers steadily dwindling. The Board of Ethics will take appropriate enforcement action if necessary, to compel compliance.

Auditors Follow Up Comments to Recommendation (11)

Although the 2017 financial disclosure forms were due on or before the fifteenth of May 2018, our finding notes that as of November 2018 there were still 72 outstanding. Although they were six months late and fines could have been assessed, no fines were imposed while the Board tried to get these individuals to respond.

At the Board's Public Meeting in February 2019, it was noted that a small number of individuals had still not submitted their 2017 Financial Disclosure Forms, with follow-up efforts by the Board's Secretary continuing. At the March 25, 2019 Board meeting, it was stated that four 2017 financial disclosure forms had still not been turned in (due in May of 2018), and the Board had yet to begin a review of these forms.

As the delayed submission has been unreasonably lengthy, and the follow-up efforts require the expenditure of a County employee's labor and other resources, Auditors believe that the implementation of fines for non-compliance should be considered by the Board.

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AUDIT FINDING (12)

(12) The Prior Board of Ethics Was Not Fully Reviewing Financial Disclosure Forms and Needs an Electronic System to Cross-Reference County Employees with County Vendors

Audit Recommendations:

The Board of Ethics should:

- a) Work with the County Legislature, Administration, the Office of Human Resources and IT to expedite the implementation of an electronic Financial Disclosure Form and an electronic cross-reference system;
- b) Fully review all financial disclosure forms;
- c) Consider adding a certification statement to be signed by the filer, attesting to the truthfulness of their responses;
- d) Consider expanding the requirement for financial disclosure of domestic partners and require preparer to list siblings, parents, non-dependent children on Financial Disclosure form; and
- e) Require filers to identify any relatives who work for the County and other local municipalities.

Nassau County Board of Ethics Response to Recommendation (12)

The Board of Ethics, with the assistance of the County Executive's Office and the Information Technology Department, has developed, and will soon implement, a program for the secure electronic filing of Annual Statements of Financial Disclosure. This important advance will reduce the administrative burden of distributing, collecting and reviewing the disclosure forms. It will permit the Board to determine electronically whether any person required to file a disclosure form has failed to do so, whether the filed disclosure forms are complete, and whether County officers and employees have secondary employment with, or an ownership interest in any County vendor, contractor or consultant.

The Board of Ethics has adopted procedures for the review of Annual Statements of Financial Disclosure, which it has posted on the Board of Ethics website. In performing its inspection of the financial disclosure statements, the Board of Ethics or its designee:

- *Determines whether all persons required to file annual statements if financial disclosures have done so by comparing the filed disclosure statements with the list of persons required to file pursuant to Administrative Code Section 22-4.3, subdivisions (2)(a) and (4).*
- *Confirms that all questions have been answered.*
- *Determines whether the annual statements of financial disclosure may reveal an actual or potential conflict of interest by comparing the secondary employers and investments with a list of county vendors, contractor and consultants.*

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- *Determines whether the annual statements of financial disclosure may reveal an actual or potential conflict of interest by conducting a facial review of the disclosure statements.*

Auditors Follow Up Comments to Recommendation (12)

The Financial Disclosure Statement is a record containing financial and professional information about the filer and their spouse and dependent children for a calendar year for the purpose of avoiding potential conflicts of interest with the County. This is an important tool for identifying nepotism within the County.

It is reasonable to assume that the Board was fully reviewing submitted financial disclosure forms in the past. In fact, employees submit the forms with the expectation that anything they disclose will be reviewed and if there are any issues, i.e. related to nepotism, they will be contacted by the Board. However, during the audit process, it was learned that **the financial disclosure forms were “sampled” by the Counsel to the Board and another attorney in his firm rather than fully analyzed by Board Members.**

We commend the Board for its work in developing and implementing a new program for the secure electronic filing of the Annual Statements of Financial Disclosure. As the Board notes, this will reduce its administrative burden and allow it to determine if the filed reports are complete and if County officers and employees have secondary employment or an ownership interest in any County vendors, contractors or consultants.

Updates made to the Code of Ethics (Financial Disclosure Forms) in 2017 permit the hiring of a full time Executive Director for the Board.⁵² We strongly recommend that the County fund full time staff for the Board of Ethics and hire a qualified Executive Director dedicated only to Board operations. This would provide Board Members with dedicated assistance in the financial disclosure forms review process.

We reiterate our recommendations that the Board consider adding a certification statement to be signed by the filer (electronically signed when the electronic filing system is implemented), expand the requirement of financial disclosure to domestic partners, require the preparer to identify siblings, parents, and non-dependent children on the form, and require filers to identify any relatives who work for the County and other local municipalities.

⁵² See §22- 4.3, Financial Disclosure, 6, Additional Powers of the Board of Ethics (a) “*Appoint an executive director, general counsel either by hire or contract, and such other staff as are necessary to carry out its duties under this section who shall act in accordance with the policies of said board. Said board may delegate authority to the executive director to act in the name of said board between meetings of said board provided such delegation is in writing and the specific powers to be delegated are enumerated.*”

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AUDIT FINDING (13)

(13) The Board of Ethics Must Develop Additional Policies and Procedures, Including Guidance for Departments with Related Employees

Audit Recommendations:

The Board of Ethics should:

- a) Give high priority to its review and codification of its policies and procedures, adding them to its webpage if appropriate; and
- b) Work with the Office of Human Resources and the Office of Labor Relations to develop written procedures for the hiring and supervision of relatives (nepotism), which should be distributed to all County departments.

Nassau County Board of Ethics Response to Recommendation (13)

The Board of Ethics has adopted and posted policies and procedures for the discharge of its duties.

The audit staff's "finding" that "the Board of Ethics must develop additional policies and procedures, including guidance for departments with related employees" reflects a fundamental lack of understanding of the role and function of the Board of Ethics. The Board of Ethics interprets the Code of Ethics and related authorities, renders advisory opinions upon request, provides ethics training and produces educational materials. It does not develop departmental policies and procedures.

Auditors Follow Up Comments to Recommendation (13)

We acknowledge that the Board does not ordinarily develop departmental policies and procedures as part of their responsibilities. However, during the Comptroller's Office's ongoing County-wide hiring practices review, the auditors noted that several department administrators and personnel representatives indicated that they did not have a policy regarding related employees, and that some had established their own "informal policies."

Given its body of knowledge and expertise regarding the Code of Ethics and Section 7 on the "Hiring and Supervision of Relatives" (nepotism), we believe the Board should guide and assist the Office of Human Resources and Office of Labor Relations with developing County-wide procedures covering the hiring and supervision of relatives.

Pursuant to Section 2218 (7) of the County Charter and Section 22-4.3 of the Nassau County Administrative Code, the Board of Ethics has authority to enforce Code of Ethics requirements in any manner it deems appropriate and promulgate rules and regulations.

Appendix G - Auditor's Follow Up Comments on Nassau County Board of Ethics Response

AUDIT FINDING (14)

(14) The Counsel to the Board is Involved in Many Contracts with Nassau County

Audit Recommendations:

We recommend that:

- a) The Counsel to the Board of Ethics should have no other contracts with Nassau County; and
- b) The County Attorney's Office consider updating the Counsel's contract to eliminate the language that states Counsel "from time to time, shall provide general legal advice and assistance to the Nassau County Attorney or his designee," as the Counsel's contract should be solely dedicated to the Board of Ethics.

Nassau County Board of Ethics Response to Recommendation (14)

A request for qualifications to serve as ethics counsel was issued in 2018, multiple candidates were interviewed and evaluated by the Board of Ethics. The draft report erroneously states that the contract to serve as counsel to the Board of Ethics has never been the subject of competitive bidding.

The draft report asserts that the Board's counsel should not provide legal services to the County in other matters (counsel was assigned four other matters in the nine years surveyed), arguing that "the appearance of independence from financial reliance on any administration could be clouded by multiple county contracts". This notion that counsel should be financially independent ignores the fact that counsel is, of necessity, paid by the County for the professional services rendered to the Board of Ethics. The County Attorney, who is paid by the County to represent every county department, board and agency, is himself a statutory member of the Board of Ethics. No conflict of interest has previously arisen from counsel's representation of the County in the several matters assigned. In the event a conflict were to arise between county boards, agencies or employees represented by the Board's counsel, he would be required to recuse himself as would the County Attorney or any other municipal attorney under the same circumstances. See, New York Rules of Professional Conduct, Rule 1.7.

Auditors Follow Up Comments to Recommendation (14)

The Comptroller's Office's draft report stated that "Since Counsel has been awarded this contract, it never went out to bid and the contract has been simply extended each year..." It did not state that the contract to serve as counsel to the Board of Ethics has never been the subject of competitive bidding.

Although the Counsel notes that no conflicts of interest have previously arisen from the counsel's representation of the County in other contracts, Auditors noted in one of Counsel's cases he represented the County against a police officer. This may discourage this officer or other employees from ever seeking advice from this Board of Ethics.

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We reiterate our recommendations that the Counsel to the Board of Ethics have no other contracts with the County, and that the Counsel's contract with the Board eliminate the language stating that the Counsel may from time to time, provide general legal advice and assistance to the County Attorney or his designee. To avoid conflicts of interest (both real and perceived), we believe that the Counsel's contract should be solely dedicated to the Board of Ethics.

As to the County Attorney being a member of the Board of Ethics, we feel that a similar such chilling effect could be caused by the County Attorney's membership on the Board of Ethics, as the County Attorney is an agent of the County, which may discourage employees from reporting to the Board. As such, in no way does the County Attorney's presence on the Board alleviate the risk that the Board's Counsel may need to recuse himself from the Board's activities.

Updates made to the Code of Ethics (Financial Disclosure Forms) in 2017 permit the hiring of a full time Executive Director for the Board.⁵³ We strongly recommend that the County fund full time staff for the Board of Ethics and hire a qualified Executive Director dedicated only to Board operations. This would alleviate the volunteer members of the Board from the daily operations while allowing the Counsel to the Board to function in purely advisory capacity rather than the current role of broadly managing the board operations and meetings.

AUDIT FINDING (15)

(15) The Counsel's Representation of Both the Nassau County Board of Ethics and Various Towns & Villages Boards of Ethics in Nassau County Creates Potential Conflicts of Interest

Audit Recommendations:

We recommend the Nassau County Board of Ethics consider hiring an Executive Director under Civil Service developed requirements, (see Appendix F) and not contract with outside counsel who also represents other towns and villages in Nassau County. An Executive Director can handle the duties currently performed and it will allow the Board of Ethics to have an employee solely dedicated to Nassau County's Ethics.

We also recommend that the County Executive and Legislature consider Charter changes which:

- a) rework the supportive structure of the Board of Ethics to be fully independent of either branch of government and not having any County employees; and

⁵³ See §22- 4.3, Financial Disclosure, 6, Additional Powers of the Board of Ethics (a) "*Appoint an executive director, general counsel either by hire or contract, and such other staff as are necessary to carry out its duties under this section who shall act in accordance with the policies of said board. Said board may delegate authority to the executive director to act in the name of said board between meetings of said board provided such delegation is in writing and the specific powers to be delegated are enumerated.*"

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b) develop a revised code to include removing the County Attorney as a member and providing independent resources.

Nassau County Board of Ethics Response to Recommendation (15)

The Board's counsel is a former Board of Ethics chair and prominent expert in the field of government ethics. Counsel's representation of multiple municipal boards of ethics is an indication of his knowledge and experience in the field, both of which are assets to the Board of Ethics. No conflict has previously arisen from counsel's concurrent representation of the boards of ethics of other municipalities within the County. In the unlikely event that such a conflict were to arise, the conflict would be cured by counsel's recusal.

Auditors Follow Up Comments to Recommendation (15)

The Auditors believe that due to the Counsel to the Board's representation of numerous boards of ethics, it is inevitable that conflicts will arise. If the Counsel were to recuse himself, the Board would be left without counsel and would be required to obtain other outside legal services, at an additional cost to the County.

We reiterate our recommendation that the Board consider hiring an Executive Director and not contract with an outside counsel who also represents other towns and villages in Nassau County.

We also reiterate that the County Executive and Legislature should consider County Charter changes and develop a revised Code of Ethics to remove the County Attorney as a member and provide independent resources.

AUDIT FINDING (16)

(16) Board of Ethics Contract Has Been Violated by Using an Independent Attorney Not Specified in the Contract

Audit Recommendations:

We recommend that the:

- a) Members of the Board of Ethics review the Financial Disclosure forms and consult with the Counsel to the Board for guidance on the forms in the Board of Ethics meetings;
- b) Counsel to the Board be the only party of his firm involved in the Board of Ethics, as per the language of the contract; and
- c) Original Financial Disclosure Forms should not be taken off of County property.

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Nassau County Board of Ethics Response to Recommendation (16)

The members of the Board of Ethics are uncompensated volunteers. It would be unreasonably burdensome for the Board members to personally review the more than 700 disclosure statements filed each year by County officers and employees. Therefore, the task of doing so is delegated to staff, including counsel, pursuant to the Code of Ethics and policies and procedures established by the Board of Ethics.

In performing an inspection of financial disclosure statements for a particular year, the Board's counsel was assisted by another attorney of his firm working under his supervision. The draft report, without any basis in fact, erroneously asserts that disclosure forms were reviewed offsite. The audit staff made no inquiry whether disclosure statements were reviewed offsite; and they were not. The review of disclosure forms has occurred exclusively in the respective offices of the County Attorney, the County Executive, and the Commissioner of Accounts/Investigations.

Auditors Follow Up Comments to Recommendation (16)

The Auditors believe that whether the Counsel's colleague reviewed the disclosure statements onsite or offsite, it was still improper. The contract specifically states: "All of the Services provided by Counsel under this Agreement shall be provided by Attorney named (name redacted)". Yet, the County received, and paid, several invoices from the Counsel which clearly stated that his associate reviewed financial disclosure forms.⁵⁴ Additionally, in the minutes of the September 28, 2016 Board of Ethics meetings, it states that the Counsel... "*and an associate from his law firm have been reviewing random samplings of the 2015 financial disclosures for both completeness as well as any potential conflicts of interest.*"⁵⁵

With the implementation of the new program for the secure electronic filing of disclosure statements, the Board and its Secretary will have enhanced ability to identify and review reported instances of potential and/or actual conflicts of interest. **Therefore, we reiterate our recommendation that members of the Board of Ethics review the disclosure statements and that the Counsel to the Board adhere to the contract terms and be the only party of his firm involved with the Board of Ethics.**

Nassau County Board of Ethics Additional Response: Cooperation with the Comptroller's Audit

The Board of Ethics has fully cooperated with the audit staff and will continue to do so to the greatest extent possible while safeguarding the integrity and confidentiality of its functions and making efficient use of its limited resources.

In each instance in which the Board of Ethics declined to provide certain documents in response to the Controller's requests, the Board of Ethics provided detailed explanations of the reasons why it could not provide those documents. In some instances, the Board of Ethics

⁵⁴ Invoices from Counsel dated October 14, 2016 & November 4, 2016.

⁵⁵ Minutes available online: <https://www.nassaucountyny.gov/DocumentCenter/View/24560>

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proposed alternate approaches that might allow the Office of the Comptroller to receive the information it sought. For example, in responding to the Comptroller's request for access to the disclosure statements, the Board of Ethics stated that:

Annual Statements of Financial Disclosure contain information which, if disclosed, would result in an unwarranted invasion of the personal privacy. In some cases, the Disclosure Statements contain information which, if disclosed, could result in identity theft or a risk to the personal safety of the filer or to his or her family. Accordingly, it is the policy and practice of the Board of Ethics, upon receipt of a request to inspect or copy a Disclosure Statement, to redact the filer's home address, the names of minor children, and the categories of amounts. It is also the policy and practice of the Board of Ethics to notify the filer that a request for inspection or copying has been received, and to give the filer the opportunity to identify any information that he or she believes would, if disclosed, result in an unwarranted invasion of personal privacy. The Board of Ethics, within the discretion afforded by the New York Freedom of Information Law, redacts such further information as it deems appropriate. In view of the foregoing policy and practice of the Board of Ethics, your request for access to the 2016-2017 Financial Disclosure Forms would impose a significant and time consuming administrative burden. Previously, the Commissioner of Investigations sought access to the Financial Disclosure Forms. In view of the policy considerations and administrative burden that the request would have imposed, the Commissioner of Investigations was persuaded to view a sample of the Disclosure Forms. The Commissioner identified three randomly selected letters of the alphabet, and viewed the redacted foImS filed by individuals whose last names began with those letters. We ask that you do the same. (Emphasis added).

The Office of the State Comptroller, in its audits of two Long Island Municipalities that were selected for participation in a current statewide audit of local municipal ethics programs, recognized that a review of redacted disclosure statements would be sufficient to achieve the purposes of the audits, and agreed to review redacted disclosure statements.

The Board of Ethics welcomes discussion of its work and is committed to its dual goals of ensuring both the reality and the appearance of integrity in county government, and assisting county officers and employees to avoid unintended ethics violations.

Auditors Follow Up Comments to Additional Response: Cooperation with the Comptroller's Audit

The Auditors note that at the audit Entrance Conference, while the Counsel to the Board of Ethics and the County Attorney were present, the other Board members were not.

In addition, the Auditors were directed that all requests for documents and information were to be submitted to the Counsel, as the designated liaison to the auditors. As seen in Appendix C & D and the Scope Limitation on page 8, Counsel objected to many of the requests for information (Auditors questions) and documentation. Auditor interviews and examination of documents for testing are key components of any audit.

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Auditors were also limited in their access to the members of the current Board for questions and requests for information or documents. As an Exit Conference was not held, there was no opportunity for the Auditors to discuss the draft audit findings with the full Board in order to resolve any questions or issues. The Auditors stand by the Scope Limitation comments included in the audit report.

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COUNTY EXECUTIVE



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BOARD OF ETHICS

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MEMBER

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MICHAEL PERNICK
MEMBER

STEVEN G. LEVENTHAL
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NICHOLAS VEVANTE
SECRETARY

March 7, 2019

Ms. JoAnn Greene
Director of Field Audit
Office of the Nassau County Comptroller
240 Old Country Road
Mineola, New York 11501

Dear Ms. Greene:

This shall constitute the response of the Nassau County Board of Ethics to your January 11, 2019 draft audit report entitled "Limited Review of Hiring Practices and Related Parties – Nepotism – Nassau County Board of Ethics.

A. Executive Summary; Introduction

As the draft audit report acknowledges, the current Board of Ethics—which has only been fully constituted since August of 2018—has been actively working to update its policies and procedures, and implement new practices to enhance its transparency and effectiveness through a variety of new initiatives.

The Board of Ethics has already addressed and resolved many of the observations and recommendations in the draft audit report. Furthermore, many of the observations and recommendations in the draft audit report contain factual errors that reflect significant misunderstandings of the role and function of the Board of Ethics. This response will not detail each and every instance in which the draft audit report makes such errors or fails to acknowledge the significant accomplishments of the Board. Rather, this response will seek to more broadly educate the Comptroller's office on the role, function, and work of the Board of Ethics.

The current members of the Board of Ethics include a village justice and former prosecutor, two retired judges, an accomplished litigator, and the County Attorney. The Board's counsel is a former Board chair and prominent expert in the field of government ethics. The Board is multi-partisan in composition, with no more than two members affiliated with any

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particular political party. Members serve without compensation and are required to meet four times per year. The current Board of Ethics meets at least one or two times per month, often for many hours, significantly in excess of their obligation under the County Charter.

The goals of the Board of Ethics are to foster public confidence in county government by ensuring both the reality and the appearance of integrity, and to guide and protect honest county officers and employees so that they will be more likely to avoid unintended ethics violations. To accomplish these goals, the Board of Ethics, among other things, (1) issues free, confidential, and comprehensive advisory opinions to any County officers and employees that request advice; (2) provides ethics training to County officers and employees; (3) administers the County's financial disclosure program; and (4) takes appropriate action when the Board learns of actual or alleged ethical violations.

The draft audit report states that the Comptroller is engaged in a "nepotism audit" of the County and has chosen to focus first on the Board of Ethics. Although the Board of Ethics welcomes discussion of its work, it is important to make clear that the Board of Ethics has no involvement in the appointment of County officers and employees. In fact, the Board of Ethics only becomes involved in questions of nepotism or potential nepotism in three circumstances: *first*, when a county officer or employee requests ethics advice concerning potential nepotism; *second*, when nepotism is self-reported on an annual statement of financial disclosure, or *third*, when nepotism is the subject of a complaint. The Board of Ethics has, from time to time, received requests for advisory opinions from conscientious county officers and employees inquiring whether a particular personnel action would constitute prohibited nepotism, and whenever it is asked to do so, the Board of Ethics issues comprehensive advisory opinions advising those officers and employees on the appropriate course of action in light of the facts presented and the applicable authorities. The current Board of Ethics has not learned of any instance of prohibited nepotism through the financial disclosure program or through a complaint; however, if the Board were to learn of any violation of the Code of Ethics, it would take appropriate action.

If the Office of the County Comptroller becomes aware of any examples of nepotism involving current County officers and employees, the Board of Ethics expects the Office of the County Comptroller to immediately file a complaint so that the Board of Ethics can take appropriate action.

B. Audit Findings

1. Compliance with Open Meetings Law.

The Board of Ethics believes that compliance with the Open Meetings Law is not only required by law, but allows the Board of Ethics to better accomplish its mission. Accordingly, the Board of Ethics meetings are always open to the public and the public is always notified of meetings in advance.

The members of the Board of Ethics are uncompensated volunteers, each of whom have other employment, and therefore often must meet before the start of the regular work day. Because the meetings are often held before the start of the work day, the Board of Ethics makes arrangements with building security to ensure that the building is open to the public. This requires security to arrive earlier than they typically do, and as a redundancy to ensure access, the Board secretary also monitors the building entrance for any members of the public wishing to

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attend the meeting. These steps have worked, and the audit staff was always admitted to the building and attended all meetings of the Board of Ethics that occurred during the pendency of the audit field work.

At each meeting, agendas were either offered to the audit staff without request or distributed upon request.

The Open Meetings Law does not require that minutes be approved. See, New York Committee on Open Government, Advisory Opinions, OML-AO-2225, OML-AO-2425, OML-AO-2466, OML-AO-2525, OML-AO-2664, OML-AO-2851, OML-AO-2906, OML-AO-3153, OML-AO-3284, OML-AO-4845, OML-AO-5241, OML-AO-5341, OML-AO-5400. Nevertheless, the Board reviews and approves minutes from previous meetings even though it is not required to do so.

It is the consistent practice of the Board of Ethics to state its reason for adjourning to executive session (which, in most cases, is to discuss requests for confidential ethics advice). On three occasions, the reason was stated in counsel's introductory remarks made at the start of the meeting. Counsel noted that the Board would conduct its public business first, and then adjourn to executive session to discuss ethics inquiries involving particular individuals. In its future meetings, the Board of Ethics will state the reason for adjournment into executive session at the time the motion is made and approved.

2. Board of Ethics Website.

The Board of Ethics is actively engaged in updating its presence on the County website and has made improvements to the website, making information about the Board of Ethics more accessible to the County workforce. These efforts by the Board of Ethics have required, and continue to require, significant coordination among the Board of Ethics, the Office of the County Attorney and the Information Technology Department.

Recent additions and upgrades to the Board of Ethics website, many of which are not acknowledged in the draft audit report, include the following:

- A new online form for submitting requests for advisory opinions electronically.
- A new online form for submitting complaints electronically, with the option to submit complaints anonymously.
- The names and biographies of members of the Board of Ethics.
- Redacted copies of advisory opinions that the Board of Ethics determined could be published while protecting the identity of the requestor and posted those advisory opinions on its website. The Board of Ethics believes that it is helpful to make redacted advisory opinions public whenever possible, notwithstanding the need to carefully review and redact a significant number of advisory opinions. The Board of Ethics will continue to post redacted advisory opinions on its website when it believes it can do so while protecting the identity of the requestor.
- All policies and procedures adopted by the Board of Ethics. This includes: (1) policies and procedures for determining who must file Annual Statements of

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Financial Disclosure; (2) policies and procedures for conducting adjudicatory proceedings and appeals; and (3) policies and procedures for reviewing annual disclosure forms.

- The Board of Ethics has posted a portal on its website to make it easier for the public to make requests pursuant to the Freedom of Information Law.

The Board of Ethics website also includes:

- The Code of Ethics.
- A “plain language guide” to the Code of Ethics.
- A contact phone number, mailing address, and email address.

The draft audit report proposed a rubric for the purpose of assigning “rankings” of Boards of Ethics websites and states that Nassau County Board of Ethics is ranked the second lowest among the seven counties selected for comparison purposes. The draft audit report evaluated an old and outdated version of the Nassau County Board of Ethics website for the purpose of making this comparison. Based on the rubric set forth in the draft audit report, the current Nassau County Board of Ethics website is ranked the second highest of the seven counties. The only county with a higher-ranked website is Suffolk County, which, unlike Nassau County, has full time staff.

The Board of Ethics believes that a comprehensive and accessible website allows it to better carry out its mission, and has plans to continue to improve its website and online presence over the coming months.

In addition, the Board of Ethics, with the assistance of the County Executive’s Office and the Information Technology Department, has developed, and will soon implement, a program for the secure electronic filing of Annual Statements of Financial Disclosure. This important development will reduce the administrative burden of distributing, collecting and reviewing the disclosure forms. It will permit the Board to determine electronically whether any person required to file a disclosure form has failed to do so, whether the filed disclosure forms are complete, and whether county officers and employees have secondary employment with, or an ownership interest in any county vendor, contractor or consultant.

3. Forms and Instructions for Requesting Advice and for Filing Complaints.

As noted above, the Board has prepared and posted forms and instructions for requesting ethics advice and submitting ethics complaints on its website. Although no statute or authority requires that the Board of Ethics prepare forms for requesting advice or filing complaints, the Board believes that doing so is valuable because it makes it easier for county officers and employees to request advice or file ethics complaints.

4. Posting of Code of Ethics.

The Board of Ethics believes that educating County officers and employees on their ethical obligations is a central function of the Board of Ethics. The Code of Ethics, along with a plain language guide, is therefore made available to all County officers and employees on the

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Board of Ethics website and is provided to all new hires. The Board of Ethics has recommended to the County Executive that the Code of Ethics be posted in County buildings. The Board of Ethics is diligently working to make it easier for County officers and employees to learn about their ethical responsibilities through its expanded online presence and innovative ethics training, and will continue to make this a priority in the coming months and years.

5. Board of Ethics Membership.

The current Board has been fully constituted since August 2018. At no time in the past thirty years has the Board of Ethics lacked a sufficient number of members to establish a quorum, convene meetings and conduct its business.

The membership of the Board of Ethics has been diverse in gender, ethnicity, age, professional background, and experience. Its members have included four women, one African-American, three retired judges, a former prosecutor for the Grievance Committee of the 10th Judicial District, a law school dean, and a past-president of the Nassau County Bar Association, among others.

The Board of Ethics disagrees with the proposition, attributed in the draft report to the chairperson of another board of ethics, that the “majority of advisory requests or complaints are not complex in terms of legal purposes.” This statement, belied by logic and experience, reflects the need for ethics training, even among the members of local municipal boards of ethics. The Nassau County Board of Ethics is diligent and thorough in its analysis of the legal issues raised by the inquiries and complaints that it considers. It regularly employs a three-step analysis to determine whether, under the circumstances presented, the contemplated conduct would give rise to a prohibited conflict of interest. The Board considers: (i) whether the contemplated conduct would violate Article 18 of the New York General Municipal Law, (ii) whether the contemplated conduct would violate the Nassau County Code of Ethics, and (iii) whether the contemplated conduct would give rise to a prohibited appearance of impropriety under common law principles.

At no time was the Board of Ethics in violation of Local Law 4-2007 (no member of the Board of Ethics, other than the County Attorney, may be a municipal officer or employee) or Local Law 6-2017 (no member of the Board of Ethics may hold any political party office). Following the adoption of Local Laws 4 and 6 of 2017, two now former members of the Board, then serving as holdovers, were political party officials, and one of the two was also a municipal employee. However, both former Board members were qualified to serve at the time of their appointment, and thus properly served as holdovers until the appointment of their successors.

6. Investigation of Complaints by the Board of Ethics.

The Board conscientiously responds to all complaints that it receives. The current Board of Ethics has been presented with only one complaint. The Board commenced an investigation, interviewed witnesses, and expeditiously took appropriate action.

The goals of the Board of Ethics are to foster public confidence in government by ensuring both the reality and the appearance of integrity, and to guide and protect honest county officers and employees so that they will be more likely to avoid unintended ethics violations. The Board of Ethics believes that these goals are best achieved through ethics advice and education. Nevertheless, the Board of Ethics has the power and duty to investigate ethics complaints, and will not hesitate to make judicious use of this power when it is appropriate and necessary to do

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so.

The Board of Ethics disagrees with the audit recommendation that Section 2218(10)(c) be amended to mandate that the Board provide advisory opinions to county department heads and elected officials regarding any issue upon which they seek such an opinion. (Emphasis in original). This recommendation reflects a lack of understanding of the role and function of the Board of Ethics in County government.

7. Auditor Staff Access to Advisory Opinions.

The Board of Ethics has posted on its website redacted copies of those advisory opinions issued in the past year that it determined could be published with identities meaningfully protected.

The Board of Ethics takes very seriously its responsibility to protect the identity of the inquiring officers and employees and the confidentiality of the advice rendered. Ethics advice is a critical means of assisting honest County officers and employees to avoid unintended ethics violations. County officers and employees are more likely to seek ethics advice when assured that their inquiries will remain confidential. Ethics advice is most useful when it provides a detailed analysis applying the applicable standards of conduct to the facts presented. For this reason the advisory opinions rendered by the Board of Ethics include detailed analyses of the facts presented. For the same reason, redaction of the pertinent facts would render many advisory opinions meaningless. As a result, the process of selecting advisory opinions that can be redacted in a manner sufficient to protect the identity of the inquiring officers and employees is a time consuming task. Nevertheless, in the interest of promoting ethics education, the Board of Ethics will continue to posting redacted advisory opinions on its website whenever it is possible to do so with identities meaningfully protected.

The draft report states that advisory opinions are “usually” redacted and posted by boards of ethics, but cites only two examples, only one of which is a local municipal ethics board; and the posted advisory opinions of that board are far less detailed, and less informative to the recipient, than the advisory opinions rendered by the Nassau County Board of Ethics.

8. Annual Report.

As noted in the draft report, the Code of Ethics did not require the preparation of an annual report by the Board of Ethics until it was amended in July 2017. The terms of office of all members of the Board of Ethics serving in 2017 ended with the inauguration of a new administration in January, 2018 and the appointment of the members currently serving. The current Board of Ethics has just completed its first calendar year in office, has informed the County Executive and the Legislature that it is engaged in preparing its annual report, has discussed its progress at public meetings of the Board attended by the audit staff, and has reported its progress to the County Executive and the Legislature.

9. Distribution of Code of Ethics; Ethics Training.

Ethics advice, training and education are a vital means of achieving the goals of the Board of Ethics. New hires are provided with a copy of the Code of Ethics booklet as a part of their orientation packet. The booklet distributed to new hires contains a 2009 version of the Code of Ethics. The Code of Ethics was last amended in 2017, but those amendments did not change

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the code of conduct applicable to County officers and employees, except that it incorporated a requirement, already applicable to County officers and employees through the application of Article 18 of the General Municipal Law, that they disclose any interest that they may have in proposed legislation. The current Code of Ethics booklet, revised to incorporate the 2017 amendments to the Code of Ethics, is posted on the Board of Ethics website.

The Board has prepared a new, comprehensive Code of Ethics which will soon be submitted for consideration by the County Executive and Legislature. If the new Code of Ethics is adopted, the Board of Ethics will prepare a new Code of Ethics booklet containing a Plain Language Guide and a copy of the newly adopted Code of Ethics for distribution and posting on the Board of Ethics website. If the new Code of Ethics is adopted, the Board of Ethics will provide ethics training and related educational materials to assist County officers and employees in understanding their obligations under the new Code, and will post the educational materials on its website. At that time, the Board of Ethics will recommend that all County officers and employees receive ethics training.

The Board of Ethics has frequently provided ethics training to the County Attorney's office and has provided ethics training to the office of the County Executive, the Legislature, and Department Heads and their deputies.

10. Access to Board of Ethics email Correspondence.

In the transition of County administrations, the Board's support staff was changed. A programming delay resulted in a brief period during which the former support personnel retained access to Board of Ethics correspondence. The situation was corrected on discovery and is unlikely to recur. There is no reason to believe that the former support staff made unauthorized use of their temporary access to Board of Ethics correspondence.

11. Compliance with Financial Disclosure Requirements.

The Board of Ethics has consistently obtained 100% compliance with the financial disclosure requirements. While some filers are tardy in their compliance, all officers and employees who have been required to file disclosure forms have eventually complied. That experience is repeating itself in the current cycle, with the list non-filers steadily dwindling. The Board of Ethics will take appropriate enforcement action if necessary to compel compliance.

12. Electronic Filing of Disclosure Forms.

The Board of Ethics, with the assistance of the County Executive's Office and the Information Technology Department, has developed, and will soon implement, a program for the secure electronic filing of Annual Statements of Financial Disclosure. This important advance will reduce the administrative burden of distributing, collecting and reviewing the disclosure forms. It will permit the Board to determine electronically whether any person required to file a disclosure form has failed to do so, whether the filed disclosure forms are complete, and whether County officers and employees have secondary employment with, or an ownership interest in any County vendor, contractor or consultant.

The Board of Ethics has adopted procedures for the review of Annual Statements of Financial Disclosure, which it has posted on the Board of Ethics website. In performing its inspection of the financial disclosure statements, the Board of Ethics or its designee:

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- Determines whether all persons required to file annual statements of financial disclosure have done so by comparing the filed disclosure statements with the list of persons required to file pursuant to Administrative Code Section 22-4.3, subdivisions (2)(a) and (4).
- Confirms that all questions have been answered.
- Determines whether the annual statements of financial disclosure may reveal an actual or potential conflict of interest by comparing the secondary employers and investments with a list of county vendors, contractor and consultants.
- Determines whether the annual statements of financial disclosure may reveal an actual or potential conflict of interest by conducting a facial review of the disclosure statements.

13. Board of Ethics Guidance to Department Heads.

The Board of Ethics has adopted and posted policies and procedures for the discharge of its duties.

The audit staff's "finding" that "the Board of Ethics must develop additional policies and procedures, including guidance for departments with related employees" reflects a fundamental lack of understanding of the role and function of the Board of Ethics. The Board of Ethics interprets the Code of Ethics and related authorities, renders advisory opinions upon request, provides ethics training and produces educational materials. It does not develop departmental policies and procedures.

14. Counsel's Professional Services Rendered to the County.

A request for qualifications to serve as ethics counsel was issued in 2018, multiple candidates were interviewed and evaluated by the Board of Ethics. The draft report erroneously states that the contract to serve as counsel to the Board of Ethics has never been the subject of competitive bidding.

The draft report asserts that the Board's counsel should not provide legal services to the County in other matters (counsel was assigned four other matters in the nine years surveyed), arguing that "the appearance of independence from financial reliance on any administration could be clouded by multiple county contracts". This notion that counsel should be financially independent ignores the fact that counsel is, of necessity, paid by the County for the professional services rendered to the Board of Ethics. The County Attorney, who is paid by the County to represent every county department, board and agency, is himself a statutory member of the Board of Ethics. No conflict of interest has previously arisen from counsel's representation of the County in the several matters assigned. In the event a conflict were to arise between county boards, agencies or employees represented by the Board's counsel, he would be required to recuse himself as would the County Attorney or any other municipal attorney under the same circumstances. *See*, New York Rules of Professional Conduct, Rule 1.7.

15. Counsel's Representation of Other Municipalities.

The Board's counsel is a former Board of Ethics chair and prominent expert in the field of government ethics. Counsel's representation of multiple municipal boards of ethics is an indication of his knowledge and experience in the field, both of which are assets to the Board of Ethics. No conflict has previously arisen from counsel's concurrent representation of the boards

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of ethics of other municipalities within the County. In the unlikely event that such a conflict were to arise, the conflict would be cured by counsel's recusal.

16. Board of Ethics Delegation to Staff; Counsel's use of Supervised Staff.

The members of the Board of Ethics are uncompensated volunteers. It would be unreasonably burdensome for the Board members to personally review the more than 700 disclosure statements filed each year by County officers and employees. Therefore, the task of doing so is delegated to staff, including counsel, pursuant to the Code of Ethics and policies and procedures established by the Board of Ethics.

In performing an inspection of financial disclosure statements for a particular year, the Board's counsel was assisted by another attorney of his firm working under his supervision. The draft report, without any basis in fact, erroneously asserts that disclosure forms were reviewed offsite. The audit staff made no inquiry whether disclosure statements were reviewed offsite; and they were not. The review of disclosure forms has occurred exclusively in the respective offices of the County Attorney, the County Executive, and the Commissioner of Accounts/Investigations.

C. Cooperation with the Comptroller's Audit

The Board of Ethics has fully cooperated with the audit staff and will continue to do so to the greatest extent possible while safeguarding the integrity and confidentiality of its functions and making efficient use of its limited resources.

In each instance in which the Board of Ethics declined to provide certain documents in response to the Controller's requests, the Board of Ethics provided detailed explanations of the reasons why it could not provide those documents. In some instances, the Board of Ethics proposed alternate approaches that might allow the Office of the Comptroller to receive the information it sought. For example, in responding to the Comptroller's request for access to the disclosure statements, the Board of Ethics stated that:

Annual Statements of Financial Disclosure contain information which, if disclosed, would result in an unwarranted invasion of the personal privacy. In some cases, the Disclosure Statements contain information which, if disclosed, could result in identity theft or a risk to the personal safety of the filer or to his or her family. Accordingly, it is the policy and practice of the Board of Ethics, upon receipt of a request to inspect or copy a Disclosure Statement, to redact the filer's home address, the names of minor children, and the categories of amounts. It is also the policy and practice of the Board of Ethics to notify the filer that a request for inspection or copying has been received, and to give the filer the opportunity to identify any information that he or she believes would, if disclosed, result in an unwarranted invasion of personal privacy. The Board of Ethics, within the discretion afforded by the New York Freedom of Information Law, redacts such further information as it deems appropriate. In view of the foregoing policy and practice of the Board of Ethics, your request for access to the 2016-2017 Financial Disclosure Forms would impose a significant and time consuming administrative burden. Previously, the Commissioner of Investigations sought access to the Financial Disclosure Forms. In view of the policy considerations and administrative burden that the request would have imposed, the Commissioner of

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Investigations was persuaded to view a sample of the Disclosure Forms. The Commissioner identified three randomly selected letters of the alphabet, and viewed the redacted forms filed by individuals whose last names began with those letters. We ask that you do the same. (Emphasis added).

The Office of the State Comptroller, in its audits of two Long Island Municipalities that were selected for participation in a current statewide audit of local municipal ethics programs, recognized that a review of redacted disclosure statements would be sufficient to achieve the purposes of the audits, and agreed to review redacted disclosure statements.

The Board of Ethics welcomes discussion of its work and is committed to its dual goals of ensuring both the reality and the appearance of integrity in county government, and assisting county officers and employees to avoid unintended ethics violations..

Very truly yours,



Kenneth L. Gartner
Chair

via email: nccomptroller@nassaucountyny.gov

Boards of Ethics: Public Disclosure?

By Robert J. Freeman

This is an interesting time for government in New York, and boards of ethics are being called upon more frequently, and in some instances, for the first time in years, to review matters involving the conduct of public officers and employees. Often the activities of those boards will lead to questions involving access to their records under the Freedom of Information Law (FOIL)¹ and to their meetings under the Open Meetings Law (OML).²



Section 806(1)(a) of the General Municipal Law provides that the governing body of every county, city, town, village, school district and fire district *shall* and the governing body of any other municipality *may* by local law, ordinance or resolution adopt a code of ethics. Section 808(1) states that the governing body of a county may establish a county board of ethics, and subdivision (2) indicates that it "shall render advisory opinions to officers and employees of municipalities wholly or partly within the county. . . ." Subdivision (3) authorizes any municipality other than a county to establish a local board of ethics, which has the same powers and duties with respect to that municipality as the county board of ethics. In short, although thousands of municipalities other than counties are required to adopt codes of ethics, while many choose to do so, they are not required to create ethics boards.

Ethics at the State Agency Level

Before considering the application of open government laws, it is emphasized that the statutory guidance concerning the Commission on Public Integrity—the state agency that recently supplanted the State Ethics Commission—is largely irrelevant. The Commission functions in accordance with § 4 of the Executive Law. Paragraph (a) of subdivision (17) of § 4 specifies that the records of the Commission are not subject to FOIL, and that only certain records listed in that provision are accessible to the public; similarly, paragraph (b) states that the meetings of the Commission are not subject to the OML. There are no similar statutes that deal with the records and meetings of municipal ethics boards. Therefore, their records and meetings are subject to FOIL and the OML respectively.

Boards of Ethics Under the Open Meetings Law

As indicated earlier, the General Municipal Law states that a board of ethics renders advisory opinions, and questions frequently arise concerning the status of advisory bodies under the Open Meetings Law. However, since boards of ethics are creations of and carry out their functions based on statutory direction, they clearly constitute "public bodies" required to comply with the Open Meetings Law. A "meeting" is a gathering of a majority of the members of a public body, and every meeting must be preceded by notice of the time and place given in accordance with § 104. When a meeting is convened, the OML is based on a presumption of openness: meetings must be conducted and open to the public, except to the extent that an executive session may be held. Section 102(3) defines the phrase "executive session" to mean a portion of an open meeting during which the public may be excluded, and § 105(1) prescribes a procedure that must be accomplished during an open meeting before an executive session may be held. In brief, a motion to enter into executive session must be made in public; the motion must indicate the subject or subjects to be considered; and the motion must be carried by a majority of the total membership of the body. Most importantly, paragraphs (a) through (h) specify and limit the grounds for entry into executive session.

The most pertinent basis for conducting an executive session relative to the functions of boards of ethics is also the most commonly cited, and perhaps the most misunderstood. A term heard constantly as a basis for entry into executive sessions is "personnel," even though it appears nowhere in the OML. To be sure, some personnel-related issues may clearly be considered during an executive session. Nevertheless, others cannot. Moreover, often the so-called "personnel" exception has nothing to do with personnel matters. That provision permits a public body to enter into an executive session to discuss: "the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. . . ." If, for example, the issue before a board of ethics involves a policy concerning outside employment, the issue would be a personnel matter, but there would be no basis for closing the doors. On the other hand, when an issue involves a particular person in conjunction with one or more of the subjects listed in

§ 105(1)(f), an executive session could appropriately be held. For instance, if the issue deals with the “financial history” of a particular person or perhaps matters leading to the discipline of a particular person, § 105(1)(f) may be cited for the purpose of entering into an executive session.

It is emphasized that a motion indicating the issue to be discussed involving “personnel,” without more, is inadequate, for it does not provide sufficient information to enable the public to know whether the subject matter is appropriate for consideration in executive session. It has been advised and confirmed judicially that a motion under § 105(1)(f) should include two elements: first, the inclusion of the key word “particular,” so that the public can know the focus is on a specific individual; and second, one of the qualifying terms appearing in that provision. For example, a proper motion might be: “I move to enter into executive session to discuss the financial history of a particular person.” Although the identity of the subject of the discussion need not be given, a motion of that nature demonstrates a recognition of the scope of the exception and the topic may properly be considered in executive session.³

The executive session is one of two vehicles that potentially permits a public body to confer or meet in private. The other involves “exemptions,” and § 108 of the OML contains three. When an exemption applies, the OML does not, and the requirements that would operate with respect to executive sessions are not in effect. Stated differently, to discuss a matter exempted from the OML, a public body need not follow the procedure imposed by § 105(1) that relates to entry into an executive session. Further, although executive sessions may be held only for particular purposes, there is no such limitation that relates to matters that are exempt from the coverage of the OML.

Often relevant to the functions of boards of ethics is § 108(3), which exempts from the OML: “any matter made confidential by federal or state law.” When an attorney-client relationship has been invoked, it is considered confidential under § 4503 of the Civil Practice Law and Rules. Therefore, if an attorney and client establish a privileged relationship, the communications made pursuant to that relationship would be confidential under state law and, therefore, exempt from the OML.

In terms of background, it has long been held that a municipal board may establish a privileged relationship with its attorney.⁴ However, such a relationship is operable only when a municipal board or official seeks the legal advice of an attorney acting in his or her capacity as an attorney, and where there is no waiver of the privilege by the client.

Insofar as a board of ethics seeks legal advice from its attorney and the attorney renders legal advice, the attorney-client privilege may validly be asserted and communications made within the scope of the privilege would be outside the coverage of the OML. Therefore, even though there may be no basis for conducting an executive session pursuant to § 105 of the OML, a private discussion might validly be held based on the proper assertion of the attorney-client privilege pursuant to § 108, and legal advice may be requested even though litigation or possible litigation is not an issue. In that case, while the litigation exception for entry into executive session⁵ would not apply, there may be a proper assertion of the attorney-client privilege.

Following a meeting, minutes must be prepared, and § 106 provides what might be viewed as minimum requirements pertaining to their contents, stating that:

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meetings except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

In view of the foregoing, as a general rule a public body may take action during a properly convened executive session.⁶ If action is taken during an executive session, minutes reflective of the action, the date and the vote must generally be recorded in minutes pursuant to § 106(2) of the OML. If no action is taken, there is no requirement that minutes of the executive session be prepared.

Minutes of executive sessions need not include information that may be withheld under FOIL, which may be more significant in many ways than the OML.

FOIL

An initial key point regarding FOIL involves its breadth, for it pertains to all government agency records and defines the term “record” in § 86(4) to mean:

any information kept, held, filed, produced, reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

In consideration of the definition, information “in any physical form” maintained by or for a municipality, irrespective of its function, origin, or the means by which it is stored or transmitted, constitutes a “record” falling within the scope of FOIL.

Like the OML, FOIL is based on a presumption of access, directing that all records of an agency are available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in § 87(2)(a) through (j) of FOIL.

In consideration of the functions and the kinds of records likely maintained by or for boards of ethics, it is likely that two of the grounds for denial are particularly relevant.

Section 87(2)(b) authorizes an agency to withhold records when disclosure would result in an unwarranted invasion of personal privacy. Although the standard concerning privacy is flexible and may be subject to conflicting interpretations, the courts have provided substantial direction regarding the privacy of public officers and employees. It is clear public employees enjoy a lesser degree of privacy than others, for it has been found in various contexts that they are required to be more accountable than others. The courts have found, as a general rule, that records that are relevant to the performance of the duties of a public officer or employee are available, for disclosure in such instances would result in a permissible rather than an unwarranted invasion of personal privacy.⁷ Conversely, to the extent that records are irrelevant to the performance of one’s official duties, it has been found that disclosure would indeed constitute an unwarranted invasion of personal privacy.⁸

Several of the decisions referenced above dealt with situations in which determinations indicating the imposition of some sort of disciplinary action pertaining to particular public employees were found to be available.⁹ However, when allegations or charges of misconduct have not yet been determined or did not result in disciplinary action, the records relating to such allegations may be withheld, for disclosure would result in an unwarranted invasion of personal privacy.¹⁰ Further, to the extent that charges are dismissed or allegations are found to be without merit, they may be withheld.

There may also be privacy considerations concerning persons other than employees who may be subjects of a board’s inquiries. For instance, the name of a complainant or witness could be withheld in appropriate circumstances as an unwarranted invasion of personal privacy. Ordinarily, the identity of a complainant is irrelevant to the board; what is relevant is whether the complaint has merit. Moreover, if the identities of complainants or whistleblowers are made known, they are less likely to complain or blow the whistle. In that event, the government would not learn what it needs to know to carry out its duties effectively and accountably.

The other provision of relevance, § 87(2)(g), states that an agency may withhold records that:

are inter-agency or intra-agency materials which are not:

- i. statistical or factual tabulations or data;
- ii. instructions to staff that affect the public;
- iii. final agency policy or determinations; or
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government . . .

The language quoted above contains what is in effect a double negative. While inter-agency or intra-agency materials may be withheld, portions of such materials consisting of statistical or factual information, instructions to staff that affect the public, final agency policy or determinations or external audits must be made available, unless a different ground for denial could appropriately be asserted. Concurrently, those portions of inter-agency or intra-agency materials that are reflective of opinion, advice, recommendation and the like may be withheld.

Records prepared in conjunction with an inquiry or investigation by a board of ethics would constitute intra-agency materials. Insofar as they consist of opinions, advice, conjecture, recommendations and the like, they may be withheld. Factual information would be available, except to the extent, under the circumstances, that disclosure would result in an unwarranted invasion of personal privacy.

Because a board of ethics provides advisory opinions, which may be accepted, rejected or modified by the person or entity making a final decision, those opinions may be withheld under § 87(2)(g). If the decision maker specifies that it has adopted the recommendation of the board as its own, the opinion has become a final agency determination. When that determination reflects a finding of misconduct or imposes a penalty, it is accessible under subparagraph (iii) of § 87(2)(g).¹¹

An area of frequent controversy and requests by the public and the news media involves financial disclosure statements. One of the issues relates to a former provision of the statute dealing with statements filed with what had been the State Ethics Commission, which indicated they were available for inspection, but not for copying. Again, that provision pertained only to that state agency; it never applied to a municipality. Consequently, when financial disclosure statements are prepared pursuant to a municipal ethics law, they are subject to FOIL, which requires that agencies prepare copies of records pursuant to § 89(3)(a) and authorizes the assessment of fees for copying in accordance with § 87(1)(b)(iii). When a local law permitting only the inspection of financial disclosure statements was challenged, it was held that FOIL applied and required the agency to produce photocopies.¹²

In terms of access to those statements, they are typically available to the public, except those portions indicating the value of an asset or liability of a public officer or employee, or other portions which are demonstrated to be irrelevant to the performance of that person's duties.

In short, although municipal boards of ethics are required to comply with both FOIL and the OML, those statutes generally offer those boards the flexibility and the capacity to withhold records or to conduct their meetings in private to enable them to carry out their duties effectively.

Endnotes

1. Public Officers Law, Article 6, §§ 84–90.
2. Public Officers Law, Article 7, §§ 100–11.
3. *Gordon v. Village of Monticello*, August 5, 1993 (Supreme Court, Ulster Co.), *modified*, 620 N.Y.S.2d 573, 207 A.D.2d 55 (3d Dep't 1994), *reversed on other grounds*, 87 N.Y.2d 124 (1995).
4. *People ex rel. Updyke v. Gilon*, 9 N.Y.S. 243 (Sup. Ct., N.Y. Co. 1889); *Pennock v. Lane*, 36 Misc. 2d 253, 231 N.Y.S.2d 897, 898 (Sup. Ct., Albany Co. 1962).
5. Public Officers Law § 105(1)(d).
6. Public Officers Law § 105(1).
7. *See, e.g., Farrell v. Village Board of Trustees*, 83 Misc. 2d 125, 372 N.Y.S.2d 905 (Sup. Ct., Broome Co. 1975); *Gannett Co. v. County of Monroe*, 59 A.D.2d 309, 399 N.Y.S.2d 534 (4th Dep't 1977), *aff'd*, 45 N.Y.2d 954 (1978); *Sinicropi v. County of Nassau*, 76 A.D.2d 832, 428 N.Y.S.2d 312 (2d Dep't 1980); *Geneva Printing Co. v. Village of Lyons*, March 25, 1981 (Sup. Ct., Wayne Co.); *Montes v. State*, 94 Misc. 2d 972, 406 N.Y.S.2d 664 (Ct. Cl. 1978); *Powhida v. City of Albany*, 147 A.D.2d 236, 542 N.Y.S.2d 865 (3d Dep't 1989); *Scaccia v. NYS Division of State Police*, 138 A.D.2d 50, 530 N.Y.S.2d 309 (3d Dep't 1988); *Steinmetz v. Board of Education, East Moriches*, N.Y.L.J., Oct. 30, 1980 (Sup. Ct., Suffolk Co.); *Capital Newspapers v. Burns*, 67 N.Y.2d 562 (1986).
8. *See, e.g., In re Wool*, N.Y.L.J., Nov. 22, 1977 (Sup. Ct., Nassau Co.).
9. *See Farrell, Sinicropi, Geneva Printing Co., Scaccia, and Powhida*, *supra* note 7.
10. *See, e.g., Herald Company v. School District of City of Syracuse*, 104 Misc. 2d 1041, 430 N.Y.S.2d 460 (Sup. Ct., Onondaga Co. 1980).
11. *Miller v. Hewlett-Woodmere Union Free School District #14*, N.Y.L.J., May 16, 1990 (Supreme Court, Nassau Co.).
12. *See, e.g., Herald Company*, *supra* note 10.

Robert J. Freeman is the Executive Director of the New York State Committee on Open Government.

Appendix J - Index of Old Advisory Opinions Posted on the Nassau County Board of Ethics Website, March 8, 2019

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Opinion Number	Date Issued	Opinion Regarding	Summary of Request	Conclusion of Opinion	
1	101-13	5/10/2013	Conflict of Interest	The Commissioner of the Department of Public Works (DPW) requested an opinion as to whether or not a conflict of interest arose by virtue of her familial relationship with the owner of an engineering firm that entered into a contract with DPW.	The Board concluded that a prohibited conflict of interest did not arise.
2	Not Listed	4/6/2015	Conflict of Interest	A Nassau County employee inquired as to whether or not they may serve as an uncompensated member of the board of directors of a local not-for-profit (NFP) corporation.	The Board concluded that a prohibited that there would be no prohibited appearance of impropriety, however, the employee must recuse from acting as a County employee on any manner affecting the non-profit and must disclose any reimbursement from the non-profit. The Board also advised that the employee may not: 1) use or disclose any confidential County information, 2) communicate with any County board, agency, officer or employee on behalf of the NFP, or 3) work on any application or particular matter that the employee participated in their official capacity as a County employee.
3	Not Listed	9/9/2015	Gifts	Whether two County employees would receive a prohibited gift by virtue of complimentary attendance at a luncheon hosted by a not-for-profit (NFP) corporation.	The Board concluded that the employees would not be in receipt of a prohibited gift if said employees were to receive complimentary attendance at a luncheon sponsored by a NFP
4	Not Listed	10/9/2015	Gifts	Whether a County employee would receive a prohibited gift by virtue of a complimentary attendance, as an honoree, at a luncheon.	The Board concluded that the employee would be in receipt of a prohibited gift if said employee were to receive complimentary attendance at a luncheon sponsored by a not-for-profit doing business with the County. The Board further concluded that the County employee would not receive a prohibited gift were the employee to purchase or sell tickets to the event, provided said employee did not use the employee's official position to induce a vendor or co-worker to purchase a ticket.
5	Not Listed	11/30/2015	Gifts	Whether officers and employees of the Nassau County Police Department (NCPD) would receive a prohibited gift by virtue of their local facilitation of a national retailer's distribution of holiday gift cards.	The Board concluded that the NCPD would not be in receipt of a prohibited gift under these circumstances.
6	Not Listed	1/10/2017	Conflict of Interest	Whether a conflict of interest would arise if a County employee, while off duty, were to appear in uniform, in an uncompensated, non-speaking role, filmed for broadcast on network television.	The Board concluded that a prohibited conflict of interest would not arise.
7	101-17	1/11/2017	Conflict of Interest	A County employee who is also a CEO and Part Owner for a company asks whether a conflict of interest would exist if the company would engage in various hypothetical transactions.	The Board stated that it is unable to render an opinion based on hypothetical fact that are not fully developed.
8	Not Listed	4/17/2017	Conflict of Interest	Whether a conflict of interest would arise if a Nassau County employee were to serve as a licensed real estate broker selling residential and commercial real estate.	The Board concluded that there was no prohibited conflict of interest.
9	2017-09	9/15/2017	Post Employment Restrictions	The Nassau County Attorney requested a waiver so as to permit a County employee, upon termination of his County employment, to accept employment with a staffing employment agency, working with an engineering firm selected by the U.S. Department of Housing and Urban Development to provide advice in connection with the allocation and distribution of funds for the repair of infrastructure damaged by Hurricane Irene, Tropical Storm Lee and Superstorm Sandy.	The Board granted the waiver requested.
10	105-17	10/16/2017	Various Questions	The Board received a request for an advisory opinion regarding the use of County funds/resources by Elected Officials to further political interest or activities; such as mailing and flyers.	The Board stated that it is unable to render an opinion without a fully developed set of facts.

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Index of Old Advisory Opinions Posted on the Nassau County Board of Ethics Website, March 8, 2019

Opinion Number	Date Issued	Opinion Regarding	Summary of Request	Conclusion of Opinion	
11	Not Listed	2/26/2018	Conflict of Interest	1) Whether a conflict of Interest would arise if an administrative aide of Nassau County were to serve as Executive Director of a not-for-profit corporation (NFP). 2) Whether the Office of Housing may process a voucher for disbursement to that NFP. 3) Whether the corporation may receive funding from the 2018 Veterans Run Marathon now that the administrative aide is employed by the County.	The Board concluded that: 1) there was no prohibited conflict of interest, 2) the Office of Housing may process a voucher for disbursement to the NFP and 3) the NFP may receive funding
12	101-18	6/29/2018	Conflict of Interest	A Chief Contract Officer in an Office of Nassau County requested an opinion as to whether or not a conflict of interest would arise if: 1) they were to perform compensated per diem work as an instructor for the Nassau County Vocational Education and Extension Board (VEEB), and 2) they were to approve the County contract to fund VEEB.	The Board concluded that a prohibited conflict of interest did not arise and further granted a waiver for the employee to approve the County contract to fund the Nassau County Board in question.
13	110-18	6/29/2018	Conflict of Interest	A Commissioner of a Nassau County department requested an opinion as to whether or not a conflict of interest would arise if the Commissioner were to also serve in an elected position.	The Board concluded that a prohibited conflict of interest would not arise.
14	111-18	6/29/2018	Conflict of Interest	A Commissioner of a Nassau County department requested an opinion as to whether or not a conflict of interest would arise if the Commissioner's relative were to be employed by Nassau County.	The Board concluded that a prohibited conflict of interest would not arise.
15	112-18	6/29/2018	Conflict of Interest	A Nassau County employee requested an opinion as to whether or not a conflict of interest would arise if said employee were to serve as an uncompensated board member or trustee for two not-for-profit entities.	The Board concluded that a prohibited conflict of interest would not arise.
16	114-18	7/23/2018	Post Employment Restrictions	The Nassau County Attorney's Office requested a waiver so as to permit a recently retired Deputy County Attorney to provide compensated legal services to the County through the law firm by which he is now employed.	The Board granted the waiver requested.
17	115-18	7/24/2018	Post Employment Restrictions	The County Attorney's Office requests a waiver as to permit a recently retired Deputy County Attorney (DCA) to provide compensated legal services to a private sector client in a matter adverse to the County.	The Board granted the waiver requested. However, the Board concluded that the DCA may not perform compensated services in connection with any case, proceeding, application or particular matter with which the DCA was materially involved while employed by the County; nor may the DCA disclose or make unauthorized use of confidential information obtained as a result of County employment.

<https://www.nassaucountyny.gov/4716/Old-Advisory-Opinions>

Appendix K - Nassau County Board of Ethics Advisory Opinions

The following 17 Board of Ethics Advisory Opinions are consolidated into Appendix K, in the order shown below, as a separate attachment to the report.

To view the complete Old Advisory Opinions posted on the Nassau County website, please go to: <https://www.nassaucountyny.gov/audits>

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