

2022 ANNUAL REPORT OF THE DEKALB COUNTY ETHICS OFFICER

**TO: DEKALB BOARD OF ETHICS
BOARD OF COMMISSIONERS
CHIEF EXECUTIVE OFFICER**

FROM: Elisa Murphy, Ethics Officer

DATE: February 06, 2023

The DeKalb County Ethics Code, Section 22A of DeKalb County’s Organizational Act, Ga. L. 1956, p. 3237, as amended, LC 28 7585 ER (2020), requires the Ethics Officer provide an annual report outlining the activities of the Ethics Officer in the previous year and reporting on the ethical health of DeKalb County. Fortunately, the Annual Reports have now resumed; however, between 2019 to 2021 the previous administration faced litigation in which the constitutionality of the previous ethics statute was successfully challenged; in 2018 the Board of Ethics was rendered inactive. It was reconvened under the new statute in January of 2021, as set forth in more detail under “Prior History,” below.

Objectives

The Ethics Office provides Advisory Opinions to all DeKalb County officials and DeKalb County employees who seek advice on ethical issues; receives and hears complaints regarding ethical violations of DeKalb County employees and DeKalb County officials; investigates matters brought by third parties or the Ethics Officer regarding potential violations of the Ethics Code; establishes rules regarding its matters within its jurisdiction and provides forms for disclosure.

2022 History

The Board experienced ongoing transition during 2022. Over the course of 2022, Lonnie Edwards resigned as Chairman of the Board for personal reasons and Alexandra Joseph became Chairman. David Moskowitz served as Interim Chairman of the Ethics Board for a short period but returned to the Vice Chairman position.

In February 2022, outgoing Ethics Officer Stacey Kalberman resigned (her maximum six-year term would have expired in March 2022). Prior to that resignation, the Board hired an Ethics Administrator in June 2021 in fulfillment of the statutory duty outlined by the most recent change in the Ethics Law. Prior appointed Board Counsel retired in October 2021, and the Board was without appointed counsel until May 2022. Also, the Ethics Office moved to its new location at 178 Sams Street that same Summer.

After being placed on administrative leave in April 2022, the Deputy Ethics Officer hired by previous Ethics Officer Kalberman filed an United States Equal Employment Opportunity Commission (hereinafter “EEOC”) Complaint against Stacey Kalberman and the Board of Ethics, alleging race discrimination and retaliation. The Board of Ethics hired an outside law firm to conduct an impartial investigation. The results of the investigation could not substantiate the Deputy Ethics Officer’s claims. The EEOC Complaint is still pending. Both the investigator’s report and the Board’s position statement with the EEOC were made public in response to the Atlanta Journal-Constitution’s open records request.

The Board operated without a statutorily-appointed Ethics Officer from February 2022 until October 2022, when the new Ethics Officer started her tenure. Ethics Officer Elisa Murphy is the second Ethics Officer hired in the history of the Ethics Board.

Prior History from 2015-2021

In 2015, the Georgia General Assembly passed new Ethics legislation for DeKalb County. The legislation attempted to resolve a conflict of interest inherent in the original 1990 legislation. That law entrusted the Commissioners and Chief Executive Officer with appointing the ethics board members responsible for overseeing their behavior. The 2015 legislation removed the appointment power from the Commissioners and instead placed it in the hands of concerned, impartial DeKalb community organizations as well as two DeKalb judges and the DeKalb Delegation in the General Assembly.

Even prior to the formation of the 2015 legislation’s iteration of the Ethics Board, former Commissioner Sharon Barnes-Sutton initiated a lawsuit challenging the constitutionality of this appointment process. (Commissioner Sharon Barnes-Sutton v. Clara Delay et al., Civ. A. File No. 15-CV-11243). At the time she initiated the court challenge, Commissioner Barnes-Sutton had three separate cases pending before the Ethics Board.

On August 27 of 2018, the Georgia Supreme Court deemed the Board appointment clause of the 2015 Ethics legislation unconstitutional declaring that the Georgia Constitution would not permit the delegation of a government appointment to private organizations. The ruling by the Supreme Court effectively voided four board positions that were appointed by the DeKalb citizens groups because they were not appointed by elected officials. Three other Ethics Board positions remained as the appointments for these positions were made by elected officials.

In November 2019, citizens voted on an Ethics Referendum, but the Referendum failed. The Board remained inactive pending change or a reform in the law from 2018-2020.

House Rule/Bill 1243 passed, and the new DeKalb Ethics Board was established in its current form in June of 2020. In November 2020, the DeKalb County voters passed an Ethics Referendum. The new Ethics Code became effective as of January 2021.

Legislation

The current Ethics Code is still relatively new; citizens, employees, and officials of DeKalb County would benefit from further guidance on its provisions. In carrying out their respective statutory responsibilities, the Ethics Officer and Ethics Board interpret, apply, and enforce the Ethics Code. The Ethics Office remains hopeful that the General Assembly will pass legislation to amend any concerns or defects in the practical use of the most recent Ethics Code.

Training

The Ethics Office continued education efforts throughout DeKalb County in 2022. Bi-weekly, the Ethics Office provided new employee education regarding, how to file a complaint, conflicts of interest, definition and examples of gifts and gratuities, and the importance of identifying ethical issues, disclosing the issue, and employee or public official recusal.

Additionally, the Ethics Officer provides an overview of the Ethics Complaint process from start to finish, attempts to explain the jurisdictional requirements, and the legal steps of the Ethics process, including but not limited to identifying penalties and the appeal process.

Next step, the Ethics Officer will provide electronic classes, which is a critical component in training DeKalb County employees and officials.

Hotline

The Ethics Office provides the hotline service that benefits all departments. The Ethics Hotline permits employees to report ethics complaints anonymously and without fear of retaliation. The Hotline allows anyone to report a potential violation; however, the alleged violation must have occurred by a DeKalb County employee or public official. The Hotline was originally intended for anonymous reporting of ethical violations, but this Ethics Officer learned that in practice, anyone may use it to express their concerns for all departments within the county.

Since beginning in October 2022, we had eleven incidents reported; however, none alleged an ethical violation or raised items/concerns within our jurisdiction.

Hotline from 2019 to Present

Since the inception of the Hotline in July of 2014, 172 concerns have been reported. In 2017 and 2018, 99 new cases were reported on the Ethics Hotline. Out of the total 172 cases reported since 2014, the Ethics Office investigated and closed 94% of all matters reported.

The Board of Ethics dismissed cases at the preliminary stage for the following reasons: for lack of jurisdiction; previously considered and dismissed similar allegations; the evidence failed to support the allegations, or the complaint expressed conclusions or opinions without any specific, actionable allegations. Cases which remain open continue to be investigated by the Ethics Office.

Previously, more than half of all reports made through the Ethics Hotline were reported in the years 2017 and 2018. We believe that this increase in the number of reports is primarily because of the visibility of the Ethics Office and the increased trust that the employees of DeKalb County feel in an independent Ethics Office and Board. The Ethics Hotline remains a tool for discovering alleged unethical conduct.

Complaints Before the Ethics Board in 2022

Since the start of this Ethics Officer's tenure in October 2022, the Ethics Officer presented twelve cases before the Board, all of which were filed in 2022 or earlier. Some of the cases had been pending since 2016. The remainder of the cases have pending actions in state or federal courts. The Ethics Officer and Ethics Board agreed and has a history of holding those pending cases in abeyance until the court makes its final determination.

Ethical Health of DeKalb County 2019-2022

In our 2018 Annual Report, the Ethics Office reported that we were seeing some troubling practices. We stated that the most common of these was lack of established procedures and lack of adherence to procedures. These factors have been major contributors to misappropriation of funds, inappropriate awarding of contracts, time abuses, travel expense abuses and other conflicts of interest. Adherence to established procedures and the auditing of those procedures are the hard controls which mitigate risk exposure in an organization.

In 2018, the Office of Independent Internal Audit ("OIIA") conducted five separate audits of the Purchasing Department.¹ These audits revealed significant procedural deficiencies in the procurement process. In addition, both the OIIA and the Ethics Office were aware of other troubling practices such as excessive change orders, vendors performing work outside of approved specifications, retroactive payment of unapproved work, retention of vendors performing substandard work and improper assessment and evaluation of bids. As a result, both the Ethics Office and the OIIA requested an independent assessment of the Purchasing Department. A copy

¹ The following audits were conducted: 1) Audit of Purchasing Policy; 2) Audit of Emergency Purchases; 3) Audit of Sole Source Contracting; 4) Audit of Formal and Informal Procurements; 5) Audit of Low Bid Procurement Process.

of both the report and the CEO's response may be found at the following link: <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Acb54cb79-c409-4024-bd65-ed2d7d395da0>.

The Purchasing Assessment included over 60 interviews of Purchasing Department and user department personnel and included reviews of procurement contracts and procedures. The Purchasing Assessment authors made twenty-five recommendations and concluded that both hard and soft controls within the Purchasing Department (which mitigate fraud and corruption risks in an organization) were weak.

While the County Administration agreed to implement some of the recommendations, others were dismissed outright with little consideration. We find this troubling as the Purchasing Department is responsible for ensuring that the taxpayer funds are economically and appropriately expended for the public use. Purchasing is also the department which, if lacking in adequate controls, policies and procedures, is most susceptible to fraud, possible waste, and abuse. DeKalb County has a fiduciary duty to protect taxpayer funds. Thus, it is incumbent upon the government to support the implementation of best practices in the public contracting process. We are hopeful that the Administration will review the joint response of the OIIA, and the Ethics Office submitted on January 30, 2019 and reconsider some of its positions with respect to the recommendations found in the Independent Assessment.

We understand that practices do not change overnight and instilling an ethical culture in such a large organization is a process. Building an ethical culture is not something the Ethics Office can successfully do without the DeKalb County leadership which plays an integral role in the success of this endeavor.

CONCLUSION

Moving forward, this Administration will focus on conducting and promoting county-wide training, professionalism, integrity; successfully addressing and fully investigating all claims from start to finish; continuity and collaboration between other departments and the Ethics Office; modifying rules and regulations to ensure a more commonsense and practical approach; and educating the public on the Ethics Code.

Respectfully submitted,



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cc: The DeKalb County Board of Ethics Administrator