

LOUISIANA BOARD OF ETHICS
MINUTES
January 18, 2013

The Board of Ethics met on January 18, 2013 at 9:00 a.m. in the LaBelle Room on the 1st floor of the LaSalle Building located at 617 North Third Street, Baton Rouge, Louisiana, with Board Members Backhaus, Blewer, Ingrassia, Leggio, McAnelly, Monroe, Schneider and Shelton present. Absent were Board Members Lemke and Stafford. Also present were the Ethics Administrator, Kathleen Allen; the Executive Secretary, Deborah Grier; and Counsel Tracy Barker, Aneatra Boykin, Mike Dupree, Brent Durham, Jennifer Land and Suzanne Mooney.

Ms. Ann Wise, Director of the Division of Administrative Law, appeared before the Board in connection with the selection of an alternate administrative law judge to serve on the Ethics Adjudicatory Board (EAB) following the retirement of Judge Louis Pauratore. Ms. Wise submitted a paper list of twenty-three (23) names of the judges who are not currently serving on the EAB which were individually torn, folded and randomly drawn from a bowl by the Board's Executive Secretary, Deborah Grier. Following the drawing by Ms. Grier, Ms. Wise announced that the alternate judge will be Karla Coreil.

Mr. John F. Schwegmann, a candidate for Public Service Commissioner, District 3, Jefferson Parish in the October 2, 2010 election, appeared before the Board, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, in connection with a request in Docket No. 10-1111 for reconsideration of a waiver of the \$800 and \$900 late fees assessed against him for filing his 30-P and EDE-P campaign finance disclosure reports 8 and 9 days late. After hearing from Mr. Schwegmann, on motion made, seconded and unanimously passed, the Board declined to waive the late fees totaling \$1,700. Board Member Schneider recused himself.

Dr. Brian Brogle, St. Charles Parish Coroner, and his attorney, Mr. Robert Raymond, appeared before the Board in connection with a request in Docket No. 12-1513 for reconsideration of a waiver of the \$2,500 late fee assessed against Dr. Brogle for filing his amended 2009 Tier 2 annual personal financial disclosure statement 581 days late. After hearing from Dr. Brogle and Mr. Raymond, on motion made, seconded and unanimously passed, the Board declined to waive the \$2,500 late fee but suspended the entire amount conditioned upon future compliance with the Code of Governmental Ethics.

Mr. James Burland, attorney for Insurance Commissioner James Donelon, appeared before the Board in connection with a request in Docket No. 12-1589 for reconsideration of a waiver of the \$17,500 late fee assessed against Mr. Donelon for filing his 2011 Tier 1 annual personal financial disclosure statement 36 days late. After hearing from Mr. Burland, on motion made, seconded and unanimously passed, the Board denied the request for reconsideration. Board Members Backhaus and McAnelly recused themselves.

In its capacity as the Supervisory Committee on Campaign Finance Disclosure, the Board considered a request in Docket No. 12-2135 for a waiver of the \$420 campaign finance late fee assessed against Ted Rush, a candidate for East Baton Rouge Parish Metro Council, District 9, in the November 6, 2012 election, for filing his 30-P campaign finance disclosure report 6 days late. The Board unanimously deferred the matter until later in the meeting, since Mr. Rush was not present when called.

Ms. Ruby Thibeaux, a candidate for City of Kaplan Court Marshal in the November 6, 2012 election, appeared before the Board, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, in connection with a request in Docket No. 12-2206 for a waiver of the \$1,440,

\$240, and \$600 campaign finance late fees assessed against her for filing her 30-P, 10-P, and EDE-P campaign finance disclosure reports 24, 4, and 11 days late. After hearing from Ms. Thibeaux, on motion made, seconded and unanimously passed, the Board declined to waive the late fees totaling \$2,280 but suspended the entire amount conditioned upon future compliance with the Campaign Finance Disclosure Act.

Mr. Elijah "Stepper's" Banks, a candidate for Alderman for the Town of Ferriday, District B, in the November 6, 2012 election, and Mr. Emerson Slain, Mr. Banks' report preparer, appeared before the Board, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, in connection with a request in Docket No. 12-2241 for a waiver of the \$500, \$40, and \$200 campaign finance late fees assessed against Mr. Banks for filing his 30-P, 10-P, and 10-G campaign finance disclosure reports 35, 1, and 5 day(s) late. After hearing from Mr. Banks and Mr. Slain, on motion made, seconded and unanimously passed, the Board declined to waive the late fees totaling \$740 but suspended the entire amount conditioned upon future compliance with the Campaign Finance Disclosure Act.

In its capacity as the Supervisory Committee on Campaign Finance Disclosure, the Board considered a request in Docket No. 12-2135 for a waiver of the \$420 campaign finance late fee assessed against Ted Rush, a candidate for East Baton Rouge Parish Metro Council, District 9, in the November 6, 2012 election, for filing his 30-P campaign finance disclosure report 6 days late. The Board unanimously deferred the matter to the February meeting.

On motion made, seconded and unanimously passed, the Board adopted the following general consent agenda items:

On motion made, seconded and unanimously passed, the Board agreed to take action on

items G8-G18 en globo subject to any items being removed from the en globo listing for further discussion. On motion made, seconded and unanimously passed, the Board adopted the staff recommendations on items G8-G18, excluding items G13, G14 and G18, taking the following action:

Adopted for publication, a consent opinion in Docket No. 11-1255 in which Kenneth Kern and his company, Jeanerette Electric Company, agree that a violation of Section 1113A of the Code of Governmental Ethics occurred by Mr. Kern and the company entering into transactions for the sale of items to the City of Jeanerette at a time when Mr. Kern served as a member of the City of Jeanerette Board of Aldermen and in which Kenneth Kern and Jeanerette Electric Company agree to pay a fine of \$1,500.

Adopted an advisory opinion in Docket No. 12-017 concluding that Section 1113A of the Code of Governmental Ethics prohibits Paul Hildreth and Oliver Schultz, physical therapists employed by LSU Health Care Services Division (HCSD), from providing physical therapy services on weekends and holidays at the Interim LSU Public Hospital (ILH) pursuant to the school's agreement with HCSD, since such employment would be under the supervision and jurisdiction of the employees' agency. The Board further advised that physical therapists employed by HCSD who work weekends and holidays at ILH according to their job descriptions would not be in violation of any provision of the Code of Governmental Ethics.

Adopted an advisory opinion in Docket No. 12-2112 concluding that no violation of the Code of Governmental Ethics is presented by the husband of Dorothy Self, a newly elected member of the Village of Georgetown Board of Aldermen, continuing his employment as a patrol officer for the Village of Georgetown, since Earl Self has been employed with the Village of Georgetown since

2008. The Board further advised that Mrs. Self is prohibited by Section 1112 of the Code of Governmental Ethics from participating in personnel decisions in which her husband would have a substantial economic interest; however, Mrs. Self may participate in the debate and discussion regarding the matter.

Adopted an advisory opinion in Docket No. 12-2116 concluding that no violation of the Code of Governmental Ethics is presented by the Avoyelles Progress Action Committee, Inc. (APAC) hiring the auditing firm owned by Roy Durbin to conduct its 2012 audit while Felix Bordelon, APAC's current accountant, previously worked in his private business doing tax work with Kenneth Rachal, an employee of Mr. Durbin's firm, since Mr. Bordelon's business relationship with Mr. Rachal no longer exists and will not continue in the future.

Adopted an advisory opinion in Docket No. 12-2117 concluding that no violation of the Code of Governmental Ethics is presented by a company, The Drug Testing Place of Houma, co-owned by Lieutenant Russell Madere, employed by the Terrebonne Parish Sheriff's Office, using various websites to conduct background checks in his private business and charging an inflated rate to the consumer, and the results of drug testing conducted by his business being used in court, since (1) Lt. Madere's business serves the offshore oil and construction industry along with divorce attorneys in private practice and the companies that he provides collections for are not persons who conduct activities regulated by his law enforcement agency; (2) Lt. Madere's business does not enter into a business relationship or receive income from persons or companies in which his law enforcement agency has a business, contractual or other financial relationship nor will he be using databases and/or websites that he has access to strictly because of his employment with the Sheriff's Department for his personal business; and, (3) if anyone is referred for drug testing as ordered by

the court as a result of a narcotics related arrest, Lt. Madere's business will not provide a collection in that matter.

Allowed the withdrawal of a request for an advisory opinion in Docket No. 12-2149 regarding Robertha Antoine, an employee with the Office of Behavioral Health, working part-time with Louisiana Mentor, since the contract program in which she was employed under the Office of Behavioral Health will be cut during the 2013 mid-year budget cuts.

Adopted the advisory opinion in Docket No. 12-2150 concluding that no violation of the Code of Governmental Ethics is presented by the brother-in-law of Elisha Y. Lucas, the East Carroll Parish Police Jury Secretary-Treasurer, working for the police jury, since Ms. Lucas' sister passed away and her former brother-in-law is no longer an immediate family member subject to the Code of Governmental Ethics.

Adopted an advisory opinion in Docket No. 12-2153 concluding that no violation of the Code of Governmental Ethics is presented by Georgiette Moore being re-employed as a bus driver with Madison Parish School District while her biological son, Dave Wilson, III, is employed as the Transportation Supervisor, since Dave Wilson III is not considered to be a member of Ms. Moore's immediate family because he was adopted by another family at birth.

Adopted an advisory opinion in Docket No. 12-2118 concluding that no violation of the Code of Governmental Ethics is presented by Mayor Joey Normand, Town of Brusly, purchasing property and joining a homeowners association, while the homeowners association (HOA) is involved in a lawsuit with the City, since as a member of the HOA, it does not appear that Mayor Normand has an interest that is greater than the other members of the HOA. Board Member McAnelly recused himself.

Adopted an advisory opinion in Docket No. 12-2124 concluding that no violation of the Code of Governmental Ethics is presented by Jefferson Parish entering into a Memorandum of Understanding with the University of Phoenix; however, Section 1115A(1) of the Code of Governmental Ethics would prohibit employees of Jefferson Parish from receiving a four percent tuition discount provided by the Memorandum of Understanding, since the University of Phoenix would have a contractual, financial or other business relationship with Jefferson Parish.

Deferred to the March meeting, a request for an advisory opinion in Docket No. 12-2160 regarding whether Gregory St. Etienne may resign from the Board of Directors of FirstLine Schools, Inc., and accept employment with a nonprofit, and provide services to FirstLine Schools, Inc., through the nonprofit.

The Board considered the following general business agenda items:

On motion made, seconded and unanimously passed, the Board approved the minutes of the December 20-21, 2012 meetings.

The Board considered a request in Docket No. 12-404 for reconsideration of a waiver of the \$1,500 late fee assessed against Rodney Bedgood for filing his 2010 Tier 3 annual personal financial disclosure statement 110 days late. On motion made, seconded and unanimously passed, the Board declined to waive the \$1,500 late fee but waived \$1,000 and agreed to allow Mr. Bedgood to make monthly payments on the amount of \$50.

The Board considered a request for an advisory opinion in Docket No. 2076 regarding Tabitha McCloud applying for a grant from the First Time Homebuyers Program in Terrebonne Parish when her brother, Antoine Foret, serves as the HOME/Homeless Manager for Terrebonne Parish. On motion made, seconded and unanimously passed, the Board deferred the matter to the

February meeting to allow for further discussion.

The Board considered a request for an advisory opinion in Docket No. 12-2157 regarding Steven Wilson, President of the Board of Commissioners for the Ponchartrain Levee District, accepting a promoted position with his current employer, Motiva, Enterprises, LLC, in connection with a project which may come before his board, the Ponchartrain Levee District. On motion made, seconded and unanimously passed, the Board concluded that Section 1113B of the Code of Governmental Ethics would prohibit Mr. Wilson's acceptance of the promoted position if final approval for the project to which Mr. Wilson was assigned came before the Ponchartrain Levee District, since he would have an interest in a matter before his board, the Ponchartrain Levee District.

The Board recessed at 10:11 a.m. and resumed back into general business session at 10:25 a.m.

The Board considered a request for an advisory opinion in Docket No. 12-1940 from Superintendent W.L. "Trey" Folse, III of the St. Tammany Parish School District regarding the propriety of school employees receiving things of economic value from various individuals and organizations. Following a discussion of the eleven (11) scenarios set forth in the request, on motion made, seconded and unanimously passed, the Board instructed the staff to draft a proposed advisory opinion based on the Board's comments/discussion and return the matter to the February agenda.

In its capacity as the Supervisory Committee on Campaign Finance Disclosure, the Board considered requests for "good cause" waivers of late fees assessed against the following candidates:

The Board unanimously declined to waive the late fees assessed against the following:

Docket No. 12-2121 from Donald Trahan of a \$420 late fee;

Docket No. 12-2132 from Robert "Rock" Davis of a \$600 late fee;

Docket No. 12-2133 from Lindora Baker of a \$2,000 late fee;
Docket No. 12-2136 from Celia Langlinais of a \$1,000 late fee;
Docket No. 12-2137 from C. Denise Marcelle of a \$120 late fee;
Docket No. 12-2196 from Marcus Crochet of a \$1,000 late fee;
Docket No. 12-2200 from Willis Toups of a \$400 late fee;
Docket No. 12-2201 from Jeff Little of a \$400 late fee;
Docket No. 12-2203 from Roland Boudreaux of a \$400 late fee; and,
Docket No. 12-2204 from Jerry Trabona of a \$400 late fee.

In its capacity as the Supervisory Committee on Campaign Finance Disclosure, the Board considered a request in Docket No. 12-2195 for a waiver of the \$2,000, \$1097, \$2,000 and \$2,000 campaign finance late fees assessed against Gerald T. "Jerry" Arbour, a candidate for East Baton Rouge Parish School Board in the October 2, 2010 election, for filing his 30-P, 10-P, EDE-P, and 10-G campaign finance disclosure reports 806, 790, 765, 757 days late. On motion made, seconded and passed by a vote of 5 yeas by Board Members Backhaus, Ingrassia, Leggio, Monroe and Shelton and 1 nay by Board Member Blewer, the Board declined to waive the late fees totaling \$7,097 but suspended \$6,697 conditioned upon future compliance with the Campaign Finance Disclosure Act. Board Members McAnelly and Schneider recused themselves.

In its capacity as the Supervisory Committee on Campaign Finance Disclosure, the Board considered a request in Docket No. 12-2197 for a waiver of the \$320 campaign finance late fee assessed against Brenda Nevels, a candidate for Mayor of the Village of Tangipahoa in the November 6, 2012 election, for filing her EDE-P campaign finance disclosure report 8 days late. On motion made, seconded and unanimously passed, the Board declined to waive the \$320 late fee but suspended \$220 conditioned upon future compliance with the Campaign Finance Disclosure Act.

In its capacity as the Supervisory Committee on Campaign Finance Disclosure, the Board considered a request in Docket No. 12-2199 for a waiver of the \$480 campaign finance late fee assessed against Dana Bruhnke, a candidate for Mayor of the City of Shreveport in the October 2,

2010 election, for filing his EDE-P campaign finance disclosure report 8 days late. On motion made, seconded and unanimously passed, the Board continued the matter to the February meeting to allow Mr. Bruhnke to appear before the Board.

In its capacity as the Supervisory Committee on Campaign Finance Disclosure, the Board considered a request in Docket No. 12-2201 for a waiver of the \$700 campaign finance late fee assessed against Jeff Little, a candidate for Mayor of the City of Gonzales in the November 6, 2012 election, for filing his 30-P campaign finance disclosure report 41 days late. On motion made, seconded and unanimously passed, the Board declined to waive the \$700 late fee but suspended \$600 conditioned upon future compliance with the Campaign Finance Disclosure Act.

The Board considered requests for “good cause” waivers of late fees assessed against the following individuals in connection with the failure to timely file personal financial disclosure reports:

The Board considered a request in Docket No. 12-1433 for a waiver of the \$1,500 late fee assessed against Prentis Washington for filing his 2010 Tier 3 annual personal financial disclosure statement 128 days late. On motion made, seconded and unanimously passed, the Board declined to waive the \$1,500 late fee.

The Board considered a request in Docket No. 12-1949 for a waiver of the \$1,100 late fee assessed against Tracey E. Flemings-Davillier filing her 2010 Tier 2.1 annual personal financial disclosure statement 22 days late. On motion made, seconded and unanimously passed, the Board declined to waive the \$1,100 late fee but suspended \$600 conditioned upon future compliance with the Code of Governmental Ethics.

The Board considered a request in Docket No. 12-1953 for a waiver of the \$200 late fee

assessed against Claude Renaud, Jr. for filing his 2011 Tier 2.1 annual personal financial disclosure statement 4 days late. On motion made, seconded and unanimously passed, the Board declined to waive the \$200 late fee but suspended the entire late fee conditioned upon future compliance with the Code of Governmental Ethics.

The Board unanimously agreed to consider the following supplemental agenda items:

On motion made, seconded and unanimously passed, the Board agreed to take action on items GS1-GS5 en globo subject to any items being removed from the en globo listing for further discussion. On motion made, seconded and unanimously passed, the Board adopted the staff recommendations on items GS1-GS5, excluding item GS1, taking the following action:

The Board considered a consent opinion in Docket No. 11-1220 in which Linda Johnson, a member of the Board of Elementary and Secondary Education (BESE) agrees that a violation of Section 1111A of the Code of Governmental Ethics occurred by her receipt of travel to Turkey in connection with a cultural exchange trip which was paid for by the Texas Turkish American Chamber of Commerce and in which Ms. Johnson agrees to pay a fine of \$1,500. On motion made, seconded and unanimously passed, the Board adopted the consent opinion for publication.

The Board considered charges filed in Docket No. 11-1489 against Mark Cockerham for his failure to file his 2009 Tier 2 candidate personal financial disclosure statement. On motion made, seconded and unanimously passed, the Board dismissed the charges against Mr. Cockerham, since the report had been filed.

The Board considered a request for an advisory opinion in Docket No. 12-2163 regarding Katherine Gaudet, a former Medicaid and Office of Behavioral Health employee, accepting a contract or part-time position with a Bayou Health Medicaid Managed Care Network Contractor

following her employment with the Bureau of Health Services Financing. On motion made, seconded and unanimously passed, the Board concluded that no violation of the Code of Governmental Ethics is presented by Ms. Gaudet's employment with a Bayou Health Medicaid Managed Care Network Provider, since she will not be performing any services related to the Office of Behavioral Health or related to her job duties or tasks that she participated in while she was employed with the Office of Behavioral Health. The Board further advised that no violation of the Code of Governmental Ethics is presented in connection with Ms. Gaudet's recent temporary appointment with the Bureau of Health Services Financing (Medicaid), since she did not implement policy or revise or publish the materials relating to the Medicaid Professional Services Manual nor did she deal with claims issues or any of the persons that she will possibly be assisting with claims issues.

The Board considered a request for an advisory opinion in Docket No. 13-004 regarding post employment prohibitions for retirees of the Plaquemines Parish Government. On motion made, seconded and unanimously passed, the Board concluded the following:

1. Whether the former public employer can hire the former retiree to provide the same services that the retiree performed as a public employee?

Since the retiree is returning to employment on a full-time basis and not a contractual basis, there is no violation of the Code if the public servant rehires the retiree to perform the same services that he performed as an employee of the agency. Retirees, however, are prohibited under Section 1121 of the Code of Governmental Ethics from contracting back with their former agency to perform services.

2. Whether the former public employer can lease a retiree from a private leasing agency to perform the same service on a full-time or part-time basis that the retiree performed as a public employee?

Pursuant to Section 1121 of the Code of Governmental Ethics, the retirees are prohibited, for a period of two years from the date of their retirement, from assisting another person, which based on the facts would be a private leasing agency, for compensation in a transaction with their former public employer in which they participated as public employees.

3. Whether the former public employer can enter into a contract with the retiree to provide the same services on a limited basis consistent with La. R. S. 11:1928 and 1938?

4. Whether the former public employer can enter into a contract with the retiree to provide the same services that the retiree did as an employee to the public employer in excess of the requirement of La. R. S. 11:1928 and 1938?

In response to questions 3-4, the retirees are prohibited for two years following their termination of employment with the public employer, from rendering any service, on a contractual basis, that they rendered to the public employer during their public employment. The Board declined to render an opinion as to the applicability of 11:1928 and 1938, since the statutes are outside the jurisdiction of the Board.

The Board considered consent opinions in Docket No. 11-1185 in which (1) Nathan Ashby, a member of the Town of Blanchard Board of Aldermen, agrees that a violation of Section 1111C(2)(d) of the Code of Governmental Ethics occurred by his receipt of compensation from Bearing Service & Supply, Inc. while the company had a business relationship with the Town of Blanchard and a violation of Section 1112 of the Code of Governmental Ethics occurred by Mr. Ashby signing checks from the Town of Blanchard to his employer, Bearing Service & Supply, Inc., and in which Mr. Ashby agrees to pay a fine of \$1,000; and, (2) Bearing Service & Supply, Inc. agrees that a violation of Section 1117 of the Code of Governmental Ethics occurred by paying Mr. Ashby for services while he served as an alderman for the Town of Blanchard and while the company had a business relationship with the Town of Blanchard and in which Bearing Service & Supply, Inc. agrees to pay a fine of \$1,000. On motion made, seconded and unanimously passed, the Board adopted the consent opinion for publication. Board Member Blewer recused herself.

The Board unanimously agreed to add the item in Docket No. 13-028 to the supplemental agenda for consideration.

The Board considered a request for an advisory opinion in Docket No. 13-028 regarding

Timothy Martinez accepting employment with Falck Alford as a trainer at a time when Falck Alford receives funds from the Incumbent Worker Training Program (IWTP) of the Louisiana Workforce Commission (LWS) and where Mr. Martinez's wife is employed as an IWTP Application Specialist. On motion made, seconded and unanimously passed, the Board concluded that Section 1111C(2)(d) of the Code of Governmental Ethics prohibits Mr. Martinez from providing compensated services to Falck Alford, which receives funding for training services from LWC's IWTP, while his wife serves as an IWTP Application Specialist with LWC, since Falck Alford has a business and financial relationship with LWC's IWTP.

The Board considered for discussion suggestions to the Legislature for changes/amendments to the laws administered by the Louisiana Board of Ethics.

Ms. Allen provided an overview of the legislative recommendations that were submitted prior to the 2012 session and suggestions by Board Members.

Board Member Monroe vacated the Chair and Vice Chairman Schneider assumed the Chair.

The Board agreed to review the prior recommendations and determine which recommendations should be returned to the Legislature for consideration. Following a review and discussion of the recommendations submitted last year, the Board agreed to include the following four (4) items in the 2013 recommendations:

1. Provide a definition of "governmental function" as used within the definition of "public employee" in R.S. 42:1102(18)(a)(iii);
2. Provide a definition for the terms "personal use," "related to a political campaign," and the "holding of a public office." R.S. 1505.2I provides that "contributions. . . may be expended for any lawful purpose, but such funds shall not be used, loaned, or pledged by any person for any personal use unrelated to a political campaign, the holding of a public office."

3. Provide a requirement that political committees disclose the date of the election for which a contribution is given to a candidate and require the political committee to file reports for the election in which they have disclosed they are participating. In the alternative, provide a presumption in law that a contribution/loan received by a candidate should be applied to the next campaign for the office then held unless the contributor expressly indicates that it is to be applied to a past or future campaign.

4. Confidential and privileged nature of documents

The Code of Civil Procedure provides that during discovery, documents which are relevant to the pending subject matter is discoverable. The Board has declined citing the following privileges:

a. R.S. 42:1141K & L – the records of the Board of Ethics prepared or obtained in connection with an investigation is confidential and privileged.

b. Attorney client privilege – the communications between board and its attorneys and staff.

c. Work product privilege – the investigation report and notes of attorneys and investigators and the board.

d. Deliberative process privilege – the sound recordings and minutes of the board's executive meeting.

These privileges that are otherwise available to documents between attorneys and their clients are not otherwise available to the board and its attorneys. Such decisions have been made without an examination of the documents that have been asserted as privileged. The Board suggests that these privileges be specifically memorialized in the Code of Governmental Ethics (R.S. 42:1101, et seq.) and the Campaign Finance Disclosure Act (R.S. 18:1481, et seq.).

Chairman Monroe resumed the Chair.

The Board instructed the staff to draft a letter with respect to the four (4) recommendations to be considered at the Board's February meeting.

Chairman Monroe announced that the Board would not resolve into executive session to consider a matter and the matter would be deferred to the February meeting.

The Board unanimously adjourned at 12:15 p.m.

Secretary

APPROVED:

Chairman