

TO: GREENBURGH TOWN BOARD

**BOARD OF ETHICS ANNUAL REPORT TO TOWN BOARD,
PURSUANT TO SECTION 11G OF CODE OF ETHICS, FOR YEAR 2010**

I. OVERVIEW

During 2010 the principal activity of the Board of Ethics was administering verified complaints filed by residents of the Town and requests for advisory opinions made by Town officials and issuing opinions thereon. In addition, a subcommittee of the Board of Ethics worked with a subcommittee of the Town Board to develop statutory changes to the new Code of Ethics adopted in July 2007 which both of the subcommittees could jointly recommend.

II. SUMMARY OF ACTIVITIES IN 2010

A. Administering, and Issuing Opinions on, Verified Complaints and Requests for Advisory Opinions

During 2010 the Board of Ethics issued twelve opinions. Eight were generated by verified complaints filed by Town residents, and four were generated by requests for advisory opinions by Town officials [1]:

Opinion 2010-1 dismissed a verified complaint against a Town official alleging improper hiring of a staff member at the Theodore Young Community Center on the grounds that such matter was not one covered by the provisions of the Code of Ethics.

Opinion 2010-2 was an advisory opinion to the effect that, subject to certain conditions, it did not violate the Code of Ethics for the Town Attorney, at the request of a political party committee, to address the committee regarding pending litigation involving the Town.

Opinion 2010-3 found that a Town official violated the Code of Ethics by soliciting one or more agency members for political contributions. The Board of Ethics made recommendations regarding future political contribution solicitation activities, and the Town official involved indicated in writing to the Board of Ethics that he would comply with those recommendations in his future solicitation activities.

Opinions 2010-4 and 4B dismissed verified complaints regarding solicitation and acceptance of political contributions of a spouse of an uncompensated agency member. The Code of Ethics concluded that the Code of Ethics did not proscribe solicitation and acceptance from spouses of uncompensated agency members and that agency members are not appointed officers of the Town.

Opinion 2010-5 dismissed a verified complaint regarding solicitation and acceptance of political contributions from a political action committee (PAC). Upon reviewing the language and legislative history of the July 2007 amendments to the Code of Ethics and the recent U.S. Supreme Court *Citizens Union* case, the Board of Ethics concluded the Code of Ethics did not proscribe solicitation and acceptance from a PAC.

Opinions 2010-6 and 8 dismissed verified complaints alleging that certain Town officials had undisclosed interests in a litigation involving the Town.

Opinion 2010-7 was an advisory opinion concluding that the Code of Ethics is not violated by acceptance of a bid from a supplier of good/services who also does work for one or more applicants before the Town.

Opinion 2010-9 was an advisory opinion regarding a Town official giving input to the Town Attorney who was deciding an appeal under the Freedom of Information Law.

Opinion 2010-10 dismissed a verified complaint regarding the alleged solicitation of a fire truck from an applicant on the grounds that the matter occurred before the adoption of the July 2007 Code of Ethics permitting residents to bring verified complaints.

Opinion 2010-11 was an advisory opinion regarding a board inviting two Town officials to the board's annual holiday party and the members of the board paying for dinner of those Town officials.

There are four stages to a Board of Ethics investigation of a verified complaint: The first stage entails a review of technical requirements (e.g., the complaint has been signed and verified). The second stage entails a review as to whether the complaint potentially implicates a provision of the Code of Ethics. The third stage is an initial "Phase 1" investigation, typically involving review of documents and answers to written questions. If the Board of Ethics is not able to determine in the Phase 1 investigation that no violation has occurred, then a more formal "Phase 2" investigation, including oral testimony under oath, is commenced. [2] [3]

During 2010, the Board of Ethics observed that some complaints which were repetitive were being filed and, in October 2010 the Board of Ethics adopted an amendment to its internal rules and procedures to the effect that a Phase I investigation would not be commenced if the Board of Ethics determined that a complaint involves the same operative facts of a prior complaint or if the issue had been covered by a previous opinion.

Since the beginning of 2011, the Board of Ethics has issued two advisory opinions and has pending four resident verified complaints which it is administering.

B. Legislative Matters

As recommended in the Annual Report for 2007, the Board of Ethics began a statutory refinement project in the second half of 2008 and continued working on this project during 2009. The statutory refinement project undertaken by the Board of Ethics did not involve consideration of policy changes to the Code of Ethics.

The Board of Ethics held two joint meetings with the Town Board in early 2009, and the Board of Ethics also received comments from the public. In September 2009, the Board of Ethics issued a report to the Town Board on the statutory changes it recommended. These were administrative, non-substantive changes.

A joint meeting with the Town Board was held in November 2009, at which time several members of the Town Board indicated that the Town Board may wish to adopt some substantive changes to the Code of Ethics. The Town Board and Board of Ethics each appointed a subcommittee to work on a revision to the Code of Ethics which would combine substantive and non-substantive changes. Several meetings were held on this during 2010. Based on these discussions and research done by the Board of Ethics subcommittee on several issues, the Board of Ethics subcommittee prepared a draft Code of Ethics revision which it sent to the Town Board subcommittee in October 2010 for comments; to date, the Board of Ethics subcommittee has received comments from one of the Town Board subcommittee members.

C. NYS Comptroller Ethics Audit

In April 2010 the NYS Comptroller conducted an ethics audit of 31 municipalities in the State, including the Town of Greenburgh. This resulted in Examination Letter to the Town, dated March 18, 2010. In July 2010, the Town responded, in the Corrective Action Plan it was required to submit to the NYS Comptroller, that it would address these issues. Among the issues raised in the Examination Letter were the need for statutory provisions relating to nepotism and recusal; both of these were addressed in the manner recommended by the NYS Comptroller in the October 2010 statutory revisions prepared by the Board of Ethics subcommittee.

The Examination Letter also found that the Town was deficient in the area of ethics training. Section 10F of the Code of Ethics provides that the Town Attorney's Office shall develop ethics training materials and programs. Such materials developed by the Town Attorney's Office are to be reviewed for substantive accuracy by the Board of Ethics; to date, the Board of Ethics has not received any such

materials for review. Section 10F of the Code of Ethics further provides that the Town Attorney's Office is required to conduct Code of Ethics training programs, and (with a few specified exceptions) those persons who are required to file annual financial disclosure statements under Section 8 are required to attend a Code of Ethics training programs at least once every two years. The Board of Ethics has appointed a subcommittee to analyze ethics training in the Town, and the Board of Ethics intends to issue a report under Section 11 H as to the status of the Town's compliance with the ethical training requirements of the Code of Ethics and the Examination Letter.

D. Annual Financial Disclosure Statements

Pursuant to Section 8E of the Code of Ethics, public officers, certain local political party officials, certain candidates for local elected office, and employees and agency members with decisionmaking authority are required to file Annual Financial Disclosure Statements. Section 8E further provides that "the Town Board shall determine the list of persons who are subject to the disclosure requirements." In 2008, 2009 and 2010, the Town Board deferred acting on making this determination, and the Forms were sent to those individuals to whom they had been sent in the past.

E. Threats Against Board of Ethics Members

Unlike any other board of the Town, the Board of Ethics issues opinions regarding activities of Town officials and employees. At the November 2009 joint meeting, it was agreed that the Board of Ethics would propose to the Town Board a stated policy that would explicitly prohibit threats and retaliatory actions by a Town official or employee against the Board of Ethics or its members. In February 2010, the Board of Ethics adopted a recommendation to the Town Board for a policy statement regarding threats and retaliatory actions against members of the Board of Ethics. No action has been taken by the Town Board.

F. Counsel

The Board of Ethics does not have compensated independent counsel. Having counsel is a requirement of NYS law. NYS Law (General Municipal Law Section 802(2)) states that a municipal board of ethics "shall have the advice of counsel employed by the board."

At the November 2009 joint meeting, it was agreed that efforts would be made to obtain volunteer counsel, with appropriate experience and skill sets, for the Board of Ethics. Various outreaches were made, which resulted in eight responses. Five were invited to interviews at the January 2010 Board of Ethics meeting, and four appeared. Out of this process, the Board of Ethics selected two experienced litigation lawyers, Frank Apicella and Joseph Malara, as investigatory counsel and an experienced business lawyer, Gary Sastow, as administrative counsel. Notification was given to the Town Board, and since the Board of Ethics February 2010 meeting the three have been serving on an uncompensated *pro bono* basis. The public service provided by the volunteer counsel have been very helpful to the Board of Ethics.

G. Membership

During 2010 the vacant fifth membership slot was filled with the appointment of Mark Constantine, a resident of unincorporated Greenburgh who is a registered Republican. For the first time since its reconstitution in 2007, the Board of Ethics had five fully participating members.

On December 31, 2010, the term of Walter Rivera expired. Walter was a resident of unincorporated Greenburgh and a registered Democrat. Walter acted as Secretary of the Board of Ethics, was chair of one of the investigatory panels, and was a full participant in opinions and reports. The Board of Ethics is most appreciative of Walter's public service.

In the fall of 2010, the Town Board appointed Glenn Eisen, a resident of the Village of Hastings who is a registered Democrat, to the Board of Ethics, which appointment took effect upon the expiration of Walter Rivera's term.

H. *Other Ethics Proceedings*

The Board of Ethics followed (i) the charges brought against Congressman Rangel in the U.S. House of Representative and the subsequent trial in the House, (ii) the Report prepared by former Chief Judge Judith Kaye of the New York Court of Appeals in connections with activities of Gov. Patterson relating to a criminal complaint lodged against one of his aides, (iii) the NYS Comm. on Public Integrity's fining of Gov. Patterson for accepting gifts, and (iv) a recent Federal court case holding constitutionally invalid the confidentiality provisions of the Pennsylvania Public Official Ethics Act.

III. RECOMMENDATIONS

A. *Statutory Amendments.* The Board of Ethics believes that the non-substantive statutory refinements it recommended in September 2009 make salutary amendments to the Code of Ethics, and urge their adoption.

B. *Policy Statement re Threats Against Board of Ethics Members.* The Board of Ethics recommends that the Town Board adopt the policy statement recommended by the Board of Ethics re threats and retaliatory actions against members of the Board of Ethics.

Dated: February 25, 2011

Respectfully submitted,

GREENBURGH BOARD OF ETHICS
Mark Constantine, Secretary
Glenn Eisen
Jack McLaughlin, Chair Statutory and Rules Committee
Mike Sigal, Chair
Eric Scott

cc: Town Clerk
Frank Apicella, Esq., Counsel
Joseph Malara, Esq., Counsel
Gary Sastow, Esq., Counsel

ENDNOTES:

1. The brief opinion summaries herein are solely for purposes of the Annual Report. The respective complete opinions, and not the summaries herein, should be consulted for the precise conclusions and rationales under the Code of Ethics. All of the opinions of the Board of Ethics are copied to the Town Board and Town Clerk and are posted on the Town's website.
2. The average time for administering a request for an advisory opinion is approximately a month. The time for administering resident verified complaints varies depending on a number of factors, including the complexity of the issue, the complexity of the facts, extensions of time requested the person(s) subject to the complaint, and quorum issues. Citizen verified complaints which are dismissed normally run a two - four month process.

3. To date, more than a majority, approximately 70%, of the verified complaints are dismissed at the conclusion of one of the three initial investigatory stages described above, without reaching the more formal Phase 2 investigation..