COUNTY AGENDA REQUEST

Department:	Commissioners	Presenter(s):	County Clerk Floyd Jones
Meeting Date:	Thursday, December 13, 2012	Type of Request:	Consent

Wording for the Agenda:

Approval of the County Clerk's recommendation for the November 28, 2012 Ethics Board's Order to be included into the December 13, 2012 Board of Commissioner's Minutes pursuant to Ordinance 2010-10, Section 2-213, (c)(6)(w).

Background/History/Details:

On October 11, 2012, the County Clerk received and filed an Ethics complaint from Attorney Wayne Kendall against County Attorney Scott Bennett. The Ethics Board was appointed during the November 7, 2012 Board of Commissioners Workshop meeting, and the Ethics Board held its first meeting on November 9 for organizational purposes and to formally receive the filed Ethics complaint. The Ethics Board then set November 28, 2012 as the hearing date for the complaint.

On November 26, 2012 Attorney Wayne Kendall e-mailed a revised Ethics complaint against County Attorney Scott Bennett which cited Fayette County's current Ethics Ordinance- Ordinance Number 2010-10. The County Clerk e-mailed the revised complaint to each Ethics Board member. During the November 28 Ethics Board Hearing, both Attorney Kendall and County Attorney Bennett agreed to retain the allegations made against Mr. Bennett while operating with ethical standards delineated in Ordinance 2010-10; specifically Sections 2-209 (h) and (i).

After hearing the cases by both attorneys, the Ethics Board voted in a 2-1 decision to dismiss all charges against County Attorney Scott Bennett. Pursuant to Ordinance 2010-10, Section 2-213, (c),(6),(w): "An order will be generated by the board and submitted to the board of commissioners for inclusion in the minutes within fifteen (15) days of the completed hearing."

What action are you seeking from the Board of Commissioners?

Approval of the County Clerk's recommendation for the Ethics Board's Order to be included into the December 13, 2012 Board of Commissioner's Minutes pursuant to Ordinance 2010-10, Section 2-213, (c)(6)(w).

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval	Yes		

Staff Notes:

Fayette County Ethics Board

December 4, 2012

IN THE MATTER OF:

ETHICS COMPLAINT FILED OCTOBER 11, 2012,
UPDATED NOVEMBER 26, 2012,

RICHARD MOORE AND JUDITH MOORE THROUGH THEIR ATTORNEY WAYNE B. KENDALL - AGAINST FAYETTE COUNTY ATTORNEY SCOTT D. BENNETT

ORDER ON ETHICS COMPLAINT

This matter came before the Fayette County Ethics Board for hearing on November 28, 2012, regarding an Ethics Complaint filed against Fayette County Attorney Scott D. Bennett by Attorney Wayne B. Kendall on behalf of Fayette County Citizens Richard Moore and Judith Moore.

The Ethics Complaint states that Attorney Bennett violated the following standards of the Fayette County Ethics Ordinance:

Standard 209(h) – Public Property. By engaging Rick Lindsey to sue Fayette County and agreeing to and approving the payment to him of county funds wherein he had no right as a pro se litigant to payment of county taxpayer funds Scott Bennett violated this standard.

Standard 209(i) – Special Treatment. By engaging Rick Lindsey to sue Fayette County and agreeing to and approving the payment to him of county

funds wherein he had no right as a pro se litigant to payment of county taxpayer funds Scott Bennett violated this standard.

Further, Mr. Kendall lists nine (9) points of facts to support Mr. Bennett's violation of the above-referenced Standards.

After considering the evidence presented by Mr. Kendall and the testimony of Mr. Bennett, the following is determined.

Facts numbered one (1) through five (5) state:

Mr. Bennett contacted Richard P. Lindsey to sue Fayette County; Mr. Bennett sent a complaint to Mr. Lindsey to use to file against the Fayette County Board of Commissioners, two Commissioners testified under oath in depositions that Mr. Bennett told them he contacted Mr. Lindsey and he agreed to sue the Fayette County Board of Commissioners, Mr. Bennett signed a declaration in the case of Lindsey v. Fayette County Board of Commissioners, et al. that he never asked Mr. Lindsey to sue the County nor did he ever tell anyone that he had asked him to do so, and by making the statement "I never asked Mr. Lindsey to sue the County nor did I ever tell anyone that I had asked him to do so" he is implicitly calling Commissioners Steve Brown and Robert Horgan liars.

With respect to facts numbered one (1) through five (5), it is determined that Standards 209(h) and 209(i) do not apply to these facts as follows:

a. Mr. Bennett did not violate Standard 209(h): Mr. Kendall failed to present any evidence that indicated that Mr. Bennett requested or

permitted the use of county-owned vehicles, equipment, materials or property for **personal convenience or profit.** The facts listed in numbers one (1) through five (5) in no way relate to this standard; and,

b. Mr. Bennett did not violate Standard 209(i): Mr. Kendall failed to present any evidence that indicated that Mr. Bennett granted any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen in the same or similar circumstances.

Facts numbered six (6) and seven (7) state:

Number six (6) states "we have discovered Scott Bennett approved the payment of county funds to Mr. Lindsey in the amount of $3,850.00 ostensibly for his legal work. " (The amount is actually $2,750.00, not $3,850.00 as stated in number six (6).) Number seven (7) states that "we have been advised that federal law prohibits a lawyer who represents himself in a civil rights action from collecting legal fees for representing himself."

With respect to facts numbered six (6) and seven (7), it is determined that Standards 209(h) and 209(i) do not apply to these facts as follows:

a. Mr. Bennett did not violate Standard 209(h): Mr. Kendall states that Mr. Bennett approved the payment of county funds to Mr. Lindsey in the amount of $3,850.00 ostensibly for his legal work. The amount approved for attorneys' fees was actually $2,750.00, not $3,850.00, as Mr. Kendall listed in number seven (7). On March

22, 2012, Mr. Bennett approved the payment of attorney's fees to Mr. Lindsey pursuant to negotiations by the parties prior to the Consent Decree being submitted to the Court for approval. The actual Consent Decree was signed by United States District Judge Timothy C. Batten, Sr. on March 27, 2012. Mr. Kendall failed to present any evidence that indicated that Mr. Bennett requested or permitted the use of county-owned vehicles, equipment, materials or property for **personal convenience or profit.**

b. Mr. Kendall further states in number seven (7) that "We have been advised that federal law prohibits a lawyer who represents himself in a civil rights action from collecting legal fees for representing himself. Mr. Kendall was advised incorrectly. Within the meaning of 42 U.S.C. § 1988, the **prevailing party** is entitled to recover costs, along with reasonable attorneys' fees. Mr. Lindsey, who happens to be an attorney, was the prevailing party in this action and was entitled to recover costs and attorneys' fees for bringing this action under 42 U.S.C. § 1988. This standard has not been violated in that the facts listed in numbers six (6) and seven (7) are incorrect regarding federal law; and,

c. Mr. Bennett did not violate Standard 209(i): Mr. Kendall failed to present any evidence that indicated that Mr. Bennett granted any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen in the same or similar

circumstances. The facts contained in numbers six (6) and (7) have been shown to be false in that the approval of county funds to Mr. Lindsey by Mr. Bennett was pursuant to the negotiations of the parties prior to submitting the Consent Order to the Court for approval and within the meaning of 42 U.S.C. § 1988, in that a prevailing party is entitled to recover costs and attorneys' fees. Therefore, this standard has not been violated.

Facts numbered eight (8) and nine (9) state:

Number eight (8) states that Mr. Kendall has made several open records requests of Fayette County Board of Commissioners. Number nine (9) states that by Mr. Bennett stating that the requested records do not exist, Mr. Bennett is implicitly calling Jack Krakeel a liar in that Mr. Krakeel previously stated publicly in the minutes of the Board that the records did exist.

With respect to facts numbered eight (8) and nine (9), it is determined that Standards 209(h) and 209(i) do not apply to these facts as follows:

a. Mr. Bennett did not violate Standard 209(h): Standard 209(h) does not apply to the open records requests sent to the Fayette County Board of Commissioners. In the updated Ethics Complaint of November 26, 2012, Mr. Kendall makes no reference to the open records requests with regard to Standard 209(h) being violated. Mr. Kendall only refers to Mr. Bennett engaging Mr. Lindsey to sue Fayette County and that Mr. Lindsey had no right to payment of

county taxpayer funds. Since no information or evidence regarding the facts listed in numbers eight (8) and nine (9) was produced by Mr. Kendall, it is impossible for Standard 209(h) to have been violated by Mr. Bennett.

b. Mr. Bennett did not violate Standard 209(i): In the updated Ethics Complaint of November 26, 2012, under Standard 209(i), Mr. Kendall makes no reference to Mr. Bennett stating the requested records do not exist, implicitly calling Mr. Krakeel a liar, and intentionally making a false statement to Mr. Kendall that the records do not exist. Mr. Kendall only refers to Mr. Bennett engaging Mr. Lindsey to sue Fayette County and approving the payment of county funds that Mr. Lindsey had no right to as a pro se litigant. Since no information or evidence regarding the facts listed in numbers eight (8) and nine (9) was produced by Mr. Kendall, it is impossible for Standard 209(i) to have been violated by Mr. Bennett.

Further, Mr. Kendall states in his updated Ethics Complaint of November 26, 2012, that their Ethics Complaint is intended to measure the actions of Scott Bennett against the goals and purpose of the Ethics Ordinance which are stated in Section 2-207. Mr. Kendall does not accuse Mr. Bennett of violating this Section, therefore, this Section is not considered. Mr. Kendall also references that Mr. Bennett "was a protagonist in a drama filled with unethical and legal improprieties as measured by the Rules of the State Bar of Georgia set forth in our Ethics Complaint." Rules 3.3 and 4.1

of the State Bar of Georgia Ethical Rules referenced in Mr. Kendall's Ethics Complaint filed October 11, 2012, were struck from the Complaint and will not be considered.

THEREFORE, based on the above and foregoing, and pursuant to Ordinance Section 2-213(c)(3)(b), it is **ORDERED** that the Ethics Complaint filed October 11, 2012, and updated November 26, 2012, be **DISMISSED** in that it fails to state facts sufficient to invoke disciplinary jurisdiction. Section 2-213(c)(3)(b), further states that "A rejection shall prevent re-filing of a complaint regarding the same subject(s) and alleged perpetrator(s) for the same offense.

Board member Dan Langford made a motion to dismiss facts one (1) through (7) with further consideration to be given to facts eight (8) and nine (9). Mr. Langford's motion was not seconded. Scott Rowland made a motion to dismiss the entire Complaint, which was seconded by Sheila Huddleston.

This Order of Dismissal has been agreed to by Scott Rowland, Dan Langford, and Sheila Huddleston.

DATED this 4th day of December, 2012.

SHEILA S. HUDDLESTON, Chairwoman
Fayette County Ethics Board
Fayetteville, Georgia

Floyd Jones

From: Floyd Jones
Sent: Tuesday, December 04, 2012 4:59 PM
To: sheilahuddleston@yahoo.com; dclangfordjr1989@yahoo.com; scott.rowland@peachtreeplanning.com
Subject: Ethics Board Minutes
Attachments: 11-28-2012 Ethics Hearing- Minutes.pdf

Good afternoon all,

I am attaching a copy of the Ethics Board minutes for the meeting that was held last Thursday. Please let me know if you see any corrections and if you concur with them.

The minutes are supposed to be approved at the next Ethics Board meeting, but that may not happen for quite some time (since generally these meeting are held on an as-needed basis). Still, I am required by the Ethics Ordinance to provide a copy of the minutes to the Board of Commissioners at the conclusion of the board's proceedings. (Ref: Ordinance 2010-10, Sec. 2-213, (c)(6)(e)).

I do not believe there is a need to flesh out the minutes since there is an audio recording supporting the meeting. According to the Ordinance, the minutes should specifically "include the name of the board members who make any motions, the board members who second any such motions, and the names of the individuals on the board and how each voted." These minutes fulfill those requirements.

Please let me know what your thoughts are. If I get general agreement, then I will provide these minutes to the Board of Commissioners.

Thank you!

Floyd L. Jones
County Clerk
Fayette County Board of Commissioners
Phone: (770) 305-5102
Fax: (770) 719-5585

Floyd Jones

From: Sheila Huddleston <sheilahuddleston@yahoo.com>
Sent: Tuesday, December 04, 2012 5:02 PM
To: Floyd Jones
Subject: Re: Ethics Board Minutes
Attachments: Order.12-4-12.pdf

Floyd:

Here is a copy of the Order. Will bring you the original tomorrow.

Sheila

Sheila S. Huddleston, Esquire
Huddleston Law Group, LLC
Post Office Box 2101
Peachtree City, Georgia 30269
(770) 331-3360

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Confidentiality Notice:
The information contained in this message is intended only for the personal and confidential use of the designated recipients named above. This message may be an Attorney-Client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

From: Floyd Jones <fjones@fayettecountyga.gov>
To: sheilahuddleston@yahoo.com; dclangfordjr1989@yahoo.com; scott.rowland@peachtreeplanning.com
Sent: Tuesday, December 4, 2012 4:58 PM
Subject: Ethics Board Minutes

Good afternoon all,

I am attaching a copy of the Ethics Board minutes for the meeting that was held last Thursday. Please let me know if you see any corrections and if you concur with them.

The minutes are supposed to be approved at the next Ethics Board meeting, but that may not happen for quite some time (since generally these meeting are held on an as-needed basis). Still, I am required by the Ethics Ordinance to provide a copy of the minutes to the Board of Commissioners at the conclusion of the board's proceedings. (Ref: Ordinance 2010-10, Sec. 2-213, (c)(6)(e)).

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Thank you!

Floyd L. Jones
County Clerk
Fayette County Board of Commissioners
Phone: (770) 305-5102
Fax: (770) 719-5585

Floyd Jones

From: Scott Rowland <scott_rowland@peachtreeplanning.com>
Sent: Tuesday, December 04, 2012 5:01 PM
To: Floyd Jones
Subject: Re: Ethics Board Minutes

Looks good.
Thanks, Floyd.

Scott

Scott Rowland
Peachtree Planning Corporation
235 Greencastle Road Suite A • Tyrone, Georgia, 30290
Office 678-364-1966 x 5 • Cell 770-827-6220 • FAX 678-364-1996
scott.rowland@peachtreeplanning.com

Scott Rowland, Registered Representative and Financial Advisor of Park Avenue Securities LLC (PAS), 5040 Roswell Road, Atlanta, GA 30342. Securities products/services and advisory services are offered through PAS, a registered broker-dealer and investment advisor, 800-366-0839. Financial Representative, The Guardian Life Insurance Company of America (Guardian), New York, NY. PAS is an indirect, wholly owned subsidiary of Guardian. Peachtree Planning Corporation is not an affiliate or subsidiary of PAS or Guardian. PAS is a member FINRA, SIPC

On Tue, Dec 4, 2012 at 4:58 PM, Floyd Jones <fjones@fayettecountyga.gov> wrote:

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Thank you!

Floyd L. Jones

County Clerk

Fayette County Board of Commissioners

Phone: (770) 305-5102

Fax: (770) 719-5585

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Floyd Jones

From: Dan Langford <dclangfordjr1989@yahoo.com>
Sent: Tuesday, December 04, 2012 5:22 PM
To: Floyd Jones; sheilahuddleston@yahoo.com; scott.rowland@peachtreeplanning.com
Subject: Re: Ethics Board Minutes

I haven't cross-checked your code references, Floyd, but assume they're right. Otherwise, the minutes seem perfectly fair to me, and I have no reservations about them. DL

From: Floyd Jones <fjones@fayettecountyga.gov>
To: sheilahuddleston@yahoo.com; dclangfordjr1989@yahoo.com; scott.rowland@peachtreeplanning.com
Sent: Tuesday, December 4, 2012 4:58 PM
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Thank you!

Floyd L. Jones
County Clerk
Fayette County Board of Commissioners
Phone: (770) 305-5102
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Minutes

Fayette County Ethics Board
November 28, 2012

The Fayette County Ethics Board met in Open Session at 5:30 p.m. on November 28, 2012 in the Fayette County Administration's Conference Room located at 140 Stonewall Avenue West, Suite 100, Fayetteville, Georgia 30214.

Ethics Board Members Present:	Sheila Huddleston, Chair Dan Langford, Vice-Chair Scott Rowland
Staff Present:	Floyd L. Jones, County Clerk
Other Attendees:	Scott Bennett, Fayette County Attorney Wayne Kendall, Attorney Pota Coston, Board Member- Alternate Larris Marks, Board Member- Alternate Others (Unidentified)

An audio recording of this Ethics Hearing is available and obtainable upon request to the Fayette County Clerk to the Board of Commissioners.

1. **Call to Order**

   Chairwoman Huddleston called the November 28, 2012 Ethics Board meeting to Order at 5:35 p.m.

2. **Acceptance of Agenda**

   Chairwoman Huddleston moved to accept the Agenda. Vice-Chairman Langford seconded the motion. The motion passed 3-0.

3. **Consideration of the November 9, 2012 Ethics Board Minutes**

   Chairwoman Huddleston moved to approve the November 9, 2012 Ethic Board Minutes. Vice-Chairman Langford seconded the motion. The motion passed 2-0-1 with Board Member Rowland abstaining from the vote.

4. **Consideration of Vice-Chairman Dan Langford's appointment to the Fayette County Ethics Board**

   Vice-Chairman Dan Langford recused himself from this discussion and vote. Chairwoman Huddleston moved to keep Mr. Langford on the Ethics Board as there is no violation of the Ethics Ordinance. Board Member Rowland seconded the motion. The motion passed 2-0-1 with Vice-Chairman Langford abstaining from the vote.

5. **Hearing of an Ethics complaint filed by Attorney Wayne Kendall against County Attorney Scott Bennett and received by the Fayette County Clerk on October 11, 2012.**

   Chairwoman Huddleston moved to dismiss the first complaint based on incorrect ordinance as cited in the complaint. Board Member Rowland seconded the motion. Discussion followed. The Board withdrew the motion and second, and the Board did not take a vote on this motion.

Vice-Chairman Langford moved to begin the hearing of the complaint as amended by striking the previously cited rules and replacing them with the newly cited rules. Board Member Rowland seconded the motion. No discussion followed.

a. Attorney Wayne Kendall will present his case

Attorney Wayne Kendall presented his complaints against Fayette County Attorney Scott Bennett.

b. County Attorney Scott Bennett will present his case

County Attorney Scott Bennett presented his defense of the complaints presented by Attorney Wayne Kendall.

c. Attorney Wayne Kendall cross-examined County Attorney Scott Bennett

Attorney Wayne Kendall cross-examined County Attorney Scott Bennett.

d. The Ethics Board questioned Attorney Wayne Kendall

The Ethics Board questioned Attorney Wayne Kendall.

Vice-Chairman Dan Langford moved to dismiss items 1-7 of the complaint as having already been adjudicated and not applicable for the Board to consider, and to reserve items 8-9 of the Ethics complaint for further consideration pursuant to Section 2-213(6)(w) of the Ethics Ordinance. The motion died for lack of a second.

Board Member Scott Rowland moved to dismiss the Ethics complaint against Mr. Bennett citing Section 2-208 under the definition of (h) and (I); evidence was not sufficient. Chairwoman Huddleston seconded the motion based on insufficient evidence that applies to Section 2-208 (h) and (i). The motion passed 2-1 with Vice-Chairman Langford voting in opposition.

6. Adjournment

Chairwoman Huddleston moved for adjournment. Board Member Rowland seconded the motion. No vote was taken on the motion.

Chairwoman Huddleston adjourned the November 28, 2012 Ethics Board at 7:53 p.m.

A copy of the Ethics Complaint filed with the County Clerk against County Attorney Scott Bennett on October 11, 2012, identified as "Attachment 1", follows these minutes and is made an official part hereof. A copy of the revised Ethics Complaint received via email by the County Clerk on November 26, 2012 against the County Attorney, identified as "Attachment 2", follows these minutes and is made an official part hereof. A copy of the November 9, 2012 Ethics Board Minutes, identified as "Attachment 3", follows these minutes and is made an official part hereof. A copy of the Ethics Board Order, identified as "Attachment 4", follows these minutes and is made an official part hereof.

Floyd L. Jones, County Clerk

Sheila Huddleston, Chairwoman

STATE OF GEORGIA
COUNTY OF FAYETTE

ORDINANCE NO. 2010-10

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, FAYETTE COUNTY, GEORGIA CHAPTER 2, ADMINISTRATION; TO PROVIDE FOR ETHICAL STANDARDS; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR PENALTIES; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.

WHEREAS, the duly elected governing authority of Fayette County is the Board of Commissioners thereof;

WHEREAS, the governing authority desires to amend the provision that provides for the ethical standards of county officials as allowed by the State of Georgia;

WHEREAS, the health, safety, and welfare of the citizens of Fayette County, Georgia shall be improved and protected by adoption and implementation of this Ordinance.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY, GEORGIA AND IT IS HEREBY ORDAINED BY AUTHORITY THEREOF:

Section 1. That Article VIII of Chapter 2 Administration of the Code of Ordinances, Fayette County, Georgia is hereby deleted in its entirety and replaced to read as follows:

Sec. 2-207. Purpose.

The proper operation of local government requires that the public officials be independent, impartial and responsible to the people; that the government decisions and policy be made through proper channels of the governmental structure; that public office not be used for personal gain; that the public officials be free from the appearance of impropriety; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all county officials is adopted. The purpose of this policy is to establish ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interests of the county and by directing disclosure by such officials of private financial or other interests in matters affecting the county.

Sec. 2-208. Definitions.

Business entity means any business, proprietorship, firm, partnership, person in either a representative or a fiduciary capacity, association, venture, trust, or corporation.

Confidential information means any information which, by law or practice, is not available to the public.

County official or *official* shall mean the county board of commissioners, county administrator, county attorney and his assistants, and any county employee who has been appointed to the position by the board of commissioners.

Immediate family means an official and the spouse of an official, their parents, children, brothers and sisters related by blood or marriage.

Interest means direct or indirect pecuniary or material benefit accruing to a public officer or official as a result of a contract or transaction which is or may be the subject of an official act or action by or with the county except for such contracts or transactions which, by their terms and by the substance of their provisions, confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated.

For purposes of this policy, a county official shall be deemed to have an interest in the affairs of:

(1) his or her immediate family;

(2) any business entity in which the county official is an officer, director, or member having a financial interest in, or employed by it; or

(3) any business entity as to which the stock, legal ownership, or beneficial ownership of a county official is in excess of five percent of the total stock or total legal and beneficial ownership, or which is controlled or owned directly or indirectly by the county official.

Official act or *action* means any legislative, administrative, appointive or discretionary act of any official of the county or any agency, board, committee, authority or commission thereof.

Reprimand means an expression of disapproval.

Sec. 2-209. Standards.

(a) Interest in contract or transaction. No county official having the power or duty to perform an official act or action related to a contract or transaction which is or may be the subject of an official act or action of the county shall:

(1) have or thereafter acquire an interest in such contract or transaction, or

(2) have an interest in any business entity involved in such contract or transactions, or

(3) have solicited or accepted present or future employment with a person or business entity involved in such contract or transaction, or

(4) have solicited or accepted a present or future gift, favor, service, or thing of value from a person involved in such contract or transaction, except as provided in section 2-210, below.

(b) Pre-acquisition of interest. No county official shall acquire an interest in a contract or transaction which is or may be the subject of an official act or action of the county at a time when the county official believes or has reason to believe that such contract or transaction will be directly or indirectly affected by an official act or action of the county.

(c) Disclosure of information. No county official shall without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the county, or use such information to advance the financial or other private interest of himself or others.

(d) No county official shall waive the attorney-client privilege or disclose any documents protected by the attorney-client privilege without the consent of the majority of the board of commissioners.

(e) No county official shall disclose to others matters discussed in executive session of any board or commission without the consent of the majority of the board of commissioners or until after the minutes of the meeting is required to be released as a matter of law.

(f) Incompatible service. No county official shall engage in or accept private employment or render service for any private entity, when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his independence of judgment or action in the performance of his official duties, unless otherwise permitted by law and unless disclosure is made as provided in this policy.

(g) Appearance. No county official shall appear on behalf of any private person other than himself, his spouse or minor children, before any county agency, authority or board. However, a member of the board of commissioners may appear before such groups on behalf of his constituents in the course of his duties as a representative of the electorate or in the performance of public or civic obligations.

(h) Public property. No county official shall request or permit the unauthorized use of county-owned vehicles, equipment, materials or property for personal convenience or profit.

(i) Special treatment. No county official shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen in the same or similar circumstances.

(j) Later case interest. No county official shall, after the termination of service or employment with the county, accept remuneration of any kind for any appearance before any board, commission, committee, agency or authority of the county on behalf of any adverse party in relation to any case, proceeding, or application in which he personally participated during the period of his service or employment, which was under his active consideration during the period of his service or employment, or as to which he could have acquired knowledge or information during the period of his service or employment.

(k) Political recrimination. No county official, whether elected or appointed, shall promise an appointment or threaten the dismissal from any county position as a reward or punishment for any political activity.

(l) Withholding of information. No county official shall knowingly withhold any information which would impair the proper decision making of any of the county board, authorities, agency or commissions.

(m) Payment of debts. All county officials shall settle all accounts between them and the county, including the payment of taxes, in a timely fashion.

(n) Organizational integrity. County commissioners, as policy makers, shall refrain from interfering in the daily administrative affairs of department directors. Commissioners shall not, acting alone, make suggestions to the department directors or their employees regarding the performance of their duties, nor give instructions to department directors or other employees. Commissioners shall not make recommendations regarding the hiring, firing or disciplining of department directors and other county employees.

Sec. 2-210. Exceptions.

(a) It shall not be deemed a violation of the standards of this policy if the interest of a county official in a person or business entity is a contractual obligation of less than $500.00 which has not been preceded by any other obligation, discharged or existing, between the parties, and which is not the first in a series of two or more loans or debts which either of the parties is under any obligation to make or incur.

(b) The following shall not be deemed a violation of the standards of this policy:

(1) Legitimate salary, benefits, fees, commissions, or expenses associated with an official's non-public business;

(2) An award, plaque, certificate, memento, or similar item given in recognition of the official's civic, charitable, political, professional, or public service;

(3) Food, beverages, and registration at group events to which all similarly situated officials are invited;

(4) Actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting which are provided to an official so that he or she may participate or speak at the meeting;

(5) A commercially reasonable loan made in the ordinary course of business;

(6) Any gift with a total value less than $100.00 in any calendar year;

(7) Promotional items generally distributed to public officials generally;

(8) A gift from a member of the public official's immediate family; or

(9) Food, beverage, or expenses afforded public officials, and members of their immediate families, or others that are associated with normal and customary business or social functions or activities.

(c) It shall not be deemed a violation of the standards of this policy if a county official, in his capacity as such official, participates in the making of a contract even if such official has a private pecuniary interest or performs in regard to that contract some function requiring the exercise of discretion on his part, if;

(1) The contract is awarded through a process of public notice and competitive bidding, or

(2) The board of commissioners at regular meeting, after determining that it is in the best interest of the county to do so, authorizes the participation.

Sec. 2-211. Disclosure of interest in legislative action.

(a) Any member of the Board of Commissioners of Fayette County, Georgia who has financial or personal interest in any proposed legislation before the commission shall immediately disclose on the record the nature and extent of such interest.

(b) Any other official who has a financial or personal interest in any proposed legislative action of the board of commissioners, and who participates in discussion with or gives an official opinion or recommendation to the commission, shall disclose on the record the nature and extent of such interest.

Sec. 2-212. Abstentions.

A county official who has an interest that he has reason to believe may be affected by an official act or action shall abstain from any participation in the same.

Sec. 2-213. Enforcement and administration.

(a) Constituting the board; chairman.

(1) The board of ethics of the county is hereby created and authorized by the board of commissioners.

(2) The board of ethics of the county shall be composed of three (3) residents of the county to be appointed as provided herein. Each member of the board of ethics shall have been a resident of the county for at least one year immediately preceding the date of taking office and shall remain a resident of the county while serving as a member of the board of ethics. No person shall serve as a member of the board of ethics if the person has, or has had within the preceding one year period, any interest in any contract, transaction, or official action of the county.

(3) The members of the board of commissioners may nominate persons to serve on the board of ethics, who shall be appointed by a majority vote of the board of commissioners. These individuals must agree to undergo a criminal background check conducted by the County Marshal prior to designation, and/or redesignation, the results of which will be forwarded to the board of commissioners. These individuals should be available to be called upon for their term of office. At the end of each term, the board of commissioners shall appoint eligible residents to fill the board. Current members can be reappointed and there shall be no term limits for the members. If a member of the board of ethics does not finish their term, the remainder of the term shall be filled through an appointment by the board of commissioners.

(4) Alternates. In addition to the members of the board, the board of commissioners shall appoint two alternate members. These alternates shall be appointed in the same manner as members of the board of ethics.

(5) If any member of the board of ethics has a conflict of interest in any matter before the board, the remaining two members of the board of ethics shall select an alternate to serve for that matter from the two alternative members appointed by the board of commissioners.

(6) The board shall select a chairman at the beginning of each matter to be heard.

(7) Term of Office. The term of office for each member of the board of ethics and alternates shall be for three (3) years; however, in the appointment of the first board, one (1) member and one (1) alternate shall be appointed for three (3) years; one (1) member and one (1) alternate for two (2) years and one (1) member for one (1) year. It is the intent of this section that their terms be staggered. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.

(b) Duties of board. The board of ethics shall have the following duties and powers:

(1) To administer the ethics ordinance;

(2) To receive, review, process, make determinations on, and hear complaints of violations of standards required by this chapter. The board is not designed to be an oversight board or to perform investigations;

(3) To make such response to a complaint as it deems necessary to determine whether any person has violated any provisions of this chapter;

(4) To hold such hearings and make such inquiries as deemed necessary to investigate and rule upon complaints; and

(5) To report its findings and actions to the board of commissioners.

(c) Administration.

(1) Complaints.

a. All complaints of ethical violations must be filed with the county clerk, in writing, signed by the complainant, no later than 90 days after the alleged act occurred unless the complainant, by exercising reasonable diligence, failed to discover the alleged ethical violation within such 90 day period. In such a case, the complainant must file a written complaint with the county clerk no later than 90 days after the complainant discovered the alleged violation. In all such cases brought after 90 days from the date of the alleged ethical violation, the complainant bears the burden of convincing the board of the true date complainant learned of the alleged violation.

b. In no event, shall an ethical charge be filed with the county clerk more than two years from the date of the alleged ethical violation.

c. The complainant may withdraw the complaint at any time in writing.

(2) Pay and staff support.

a. The members of the board of ethics shall serve without compensation. The governing authority of the county shall provide meeting space for the board of ethics. Subject to budgetary procedures and requirements of the county, the county shall provide the board of ethics with such supplies and equipment as may be reasonably necessary for it to perform its duties and responsibilities.

b. The county clerk shall serve as the recording secretary to the board and shall provide such administrative services to the board as may be necessary.

c. Subject to budgetary procedures and requirements of the county, the county shall provide the board of ethics with such legal staffing as may be reasonably necessary for it to perform its duties and responsibilities by an attorney who does not serve at the County Attorney.

(3) Action by the board. Within 30 days of receipt of a complaint from the county clerk, the board may perform one or more of the following:

a. Upon receipt of a complaint in proper form, review the complaint to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke disciplinary jurisdiction. The board of ethics shall be empowered to collect evidence and information concerning any complaint and to add the findings and results of its investigation to the file containing such complaint;

b. Upon completion of its review and/or investigation of a complaint, the board at a public meeting may dismiss those complaints which are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke disciplinary jurisdiction. Provided, however, that a rejection of such complaint by the board of ethics shall not deprive the complaining party of any action he/she might otherwise have at law or in equity against the respondent. A rejection shall prevent refiling of a complaint regarding the same subject(s) and alleged perpetrator(s) for the same offense;

c. Admonish, formally reprimand, publicly censure, any complaining party that files an unjustified, frivolous, patently unfounded or factually insufficient complaint;

d. Forward an order to the board of commissioners; or

e. Hold a public hearing within 60 days after the complaint was received.

(4) Parties rights. At any hearing held by the board of ethics, the official who is the subject of a complaint shall have the right to written notice of the allegations at least ten business days before a hearing, to be represented by counsel, to hear and examine the evidence and witnesses and to present evidence and witnesses in opposition or in extenuation according to the procedures contained in subparagraph (6).

(5) Advisory opinions. When any official has a doubt regarding the applicability of any provision of this chapter to a particular situation, or regarding the definition of its terms, he may apply in writing or verbally during a public meeting to the county attorney for an advisory opinion. The advisory opinion shall be written unless it is given verbally during a public meeting, and may be provided directly to the requestor of such opinion. Nothing in this chapter shall be construed to prohibit a request for an informal opinion by any public official from the county attorney regarding a potential conflict of interest. Neither a request for an informal opinion, nor the making of a statement concerning a potential conflict of interest made by a member of the governing body in the course of abstaining from voting shall create a presumption or inference that a public servant actually has a personal interest in the matter about which the opinion was requested.

(6) Hearing procedures.

a. At the hearing the conduct of the parties shall be dignified both on and off the record.

b. Misconduct before the board may be grounds for summary exclusion from the hearing. The hearing is intended to receive evidence either to refute or to substantiate specific charges. It shall not be a forum for discussion of extraneous or irrelevant matters having no bearing on the charges, and the alleged misconduct of others who may have escaped discipline in the past shall serve as no defense. All parties at action and witnesses shall be given ample time and opportunity to develop points, subject to the discretion of the board.

c. It should be recognized that the board will be composed of private citizens. Accordingly, the board may not follow established legal procedures as might be expected in a court of law. However, in taking testimony and in considering the evidence, the board shall follow accepted legal procedure insofar as is practicable but shall not be bound by the technical rules of evidence observed in courts of law. The board may decline to listen to numerous character witnesses or numbers of witnesses testifying to identical facts.

d. The chairman of the board of ethics shall conduct the hearing.

e. The hearing shall be recorded and the county clerk shall prepare a written summary of the hearing. The complainant and/or respondent may provide a court reporter at their expense for a verbatim transcript of the hearing, if so desired. The county clerk, or their designee shall take minutes of the hearing, specifically including the name of the board members who make any motions, the board members who second any such motions, and the names of the individuals on the board and how each voted. This written report shall be presented to the board of commissioners at the conclusion of the board's proceedings.

f. Three members of the constituted board shall be required to conduct the hearing. The ethics board may, before the hearing and upon ten days notice to all parties, approve regulations governing conduct of ethics board hearings so long as such regulations do not conflict with this Article.

g. The person who filed the complaint ("complainant") shall present his case to the board first.

h. All documentary evidence which is anticipated to be submitted to the board at the hearing by either the respondent or the complainant, and the names, with telephone numbers, of all individuals expected to present testimony to the board on behalf of either the respondent or complainant, must be given to the county clerk and the opposing party at least ten days in advance of the hearing. This requirement shall not apply to evidence used solely for purposes of cross-examination or rebuttal. The failure of a party to adhere to this rule shall preclude such party from tendering such evidence or individual's testimony at the hearing through any form. The respondent, complainant, and the public shall be entitled to see all such lists which are placed on file with the county clerk.

i. The board may compel the production of any document in the possession of the county and subject to the Open Records Act and the testimony of any county employee. Where the board compels any such document or testimony after a hearing has commenced a continuation shall be provided so that such order can be complied with.

j. Neither party shall have the right to require depositions of any individual, including the opposite party.

k. The complainant's evidence must prove that respondent is guilty of the offense charged by the evidentiary standard commonly referred to as "preponderance of the evidence."

l. Each witness presented by the complainant, and including the complainant, shall be subject to cross-examination by the individual accused of the ethical violation ("respondent") or such person's representative.

m. At the conclusion of the complainant's case, the respondent shall be entitled to move for dismissal based on insufficient evidence on the part of complainant's case. If respondent makes such a motion and the board, by majority vote, agrees to dismiss the complaint, the hearing shall be terminated at this point. If either the respondent fails to make such a motion, or, if the board decides by majority vote to overrule respondent's motion, the hearing shall continue. The board may also direct a decision in favor of the respondent upon the board's own initiative.

n. Respondent shall then be entitled to present his evidence to the board.

o. Respondent is not required to testify. The absence of respondent's testimony shall not be viewed by the board as an admission of any sort.

p. If respondent testifies, then respondent shall be subject to cross-examination by complainant. All other witnesses who testify in the respondent's case shall be subject to cross-examination by complainant.

q. All persons who testify before the board, shall be placed under oath, by either the chairman or a person designated by the chairman.

r. At the conclusion of respondent's case, the complainant may offer rebuttal evidence only to those items presented in respondent's case. At the conclusion of complainant's rebuttal, respondent shall be entitled to offer rebuttal evidence only to those matters presented in complainant's rebuttal case.

s. During the course of testimony and at the conclusion of all the testimony and closure of all of the evidence, the board members may ask questions of any of the individuals who testified before the board.

t. At the conclusion of all questions by parties and board members, the chairman shall end the hearing and permit the board to deliberate in public. If the board decides by majority vote that additional evidence is needed to make a decision, the board shall have the authority to require either the complainant or respondent to submit additional evidence at a continuation of the hearing which must be held no later than 45 days after the date of the initial hearing. The board has no authority to continue the hearing past this 45-day deadline.

u. Following the conclusion of any additional evidence received at the continued hearing, the board shall continue to deliberate. When deliberations are concluded, the chairman shall call for a vote. The board may vote immediately after deliberations are concluded or they may continue the meeting for up to two weeks when a public vote must be taken. The board's first vote must be whether the respondent violated the ethics code as charged by the complainant. If, by majority vote, the board rules that the respondent did not violate the ethics code as charged by the complainant, then the matter is concluded. If the board, by majority vote, concludes that the respondent did violate the ethics code as charged by the complainant, then the board must make a second decision by majority vote. The second decision involves the form of penalty. The board shall have six options of penalty which include:

i. No admonishment and no further action;

ii. A public reprimand and admonishment not to violate the ethics code in the future;

iii. Formal reprimand;

iv. Public censure;

v. Recommendation for termination, resignation, or recall; or

vi. Recommendation of prosecution in the State Court of Fayette County.

v. The complainant may withdraw his or her complaint at any time without the approval of the board.

w. An order will be generated by the board and submitted to the board of commissioners for inclusion in the minutes within fifteen (15) days of the completed hearing.

(d) Judicial review of decisions.

(1) Any public official adversely affected by any final decision of the board of ethics under subsection (f) of this section may obtain judicial review of such decision as provided in this subsection.

(2) An action for judicial review may be commenced in the Superior Court of Fayette County within 30 days after the decision of the board of ethics becomes final.

(3) The effective date of the final decision of the board of ethics shall be postponed pending judicial review as provided for in this subsection.

(4) The record on review, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, testimony, evidence, exhibits, and other papers presented to or considered by the board of ethics and the findings and decisions of the board of ethics. As to alleged procedural irregularities, evidence may be taken independently by the court.

(5) If the court finds no error, it shall affirm the decision of the board of ethics. The court shall hold unlawful and set aside the decision of the board of ethics if it finds that such action was:

i. Arbitrary or capricious;

ii. A denial of a statutory right;

iii. Contrary to constitutional right, power, privilege, or immunity;

iv. In excess of statutory jurisdiction, authority, purposes, or limitation;

v. Not in accord with the procedures or procedural limitations of this section or as otherwise required by law;

vi. An abuse of discretion, unsupported by substantial evidence when the record is considered as a whole; or

vii. Otherwise contrary to law.

(6) The decision of the trial court shall be subject to appellate review in the same manner and with the same effect as in appeals from a final judgment or decree in any other civil action.

Sec. 2-214. Penalties.

County officials are subject to the following penalties and action for breach of ethics:

(1) Written warning or reprimand;

(2) Cancellation of the contract or rejection of the bid or offer;

(3) Recovery of the value transferred or received; and/or

(4) Debarment or suspension from award of county contract for a period of up to three years.

Sec. 2-215. Compliance with applicable laws.

No officer or official shall engage in any activity or transaction that is prohibited by any law, now existing or hereafter enacted, which is applicable to him or her by virtue of his or her office.

Secs. 2-216—2-220. - Reserved.

Section 2. That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 3. a. It is hereby declared to be the intention of the Board of Commissioners that all Sections, paragraphs, sentences, clauses and phrases of this Article are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no Section, paragraph, sentence, clause or phrase of this Article is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Article.

c. In the event that any phrase, clause, sentence, paragraph or section of this Article shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or Sections of the Article and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and Sections of the Article shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed.

Section 5. The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

IT IS SO ORDAINED THIS 18th DAY OF NOVEMBER, 2010.

BOARD OF COMMISSIONERS
FAYETTE COUNTY, GEORGIA

_____
Jack R. Smith, Chairman

ATTEST:

_____
Carol Chandler, County Clerk