COUNTY AGENDA REQUEST

Department:	Commissioners	Presenter(s):	Chairman Steve Brown
Meeting Date:	Thursday, April 25, 2013	Type of Request:	New Business

Wording for the Agenda:

Consideration of Chairman Steve Brown's request to be reimbursed for legal expenses, in the amount of $2,128.85, incurred in his defense against ethics charges filed by former County Commissioner Robert Horgan.

Background/History/Details:

On March 13, 2013, the Fayette County Ethics Board dismissed the complaint. In preparation for his defense, Chairman Brown hired the Whalen Law Firm to represent him.

Chairman Brown is requesting reimbursement for his legal defense. Please refer to the Chairman's memorandum and supporting documentation for further information.

What action are you seeking from the Board of Commissioners?

Approval of Chairman Steve Brown's request to be reimbursed for legal expenses, in the amount of $2,128.85, incurred in his defense against ethics charges filed by former County Commissioner Robert Horgan.

If this item requires funding, please describe:

If approved, funds in the amount of $2,128.85 will be expended.

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			

Staff Notes:

Fayette County

"Where Quality Is a Lifestyle"

140 Stonewall Avenue West, Ste 100
Fayetteville, Georgia 30214
Phone: 770-305-5200
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MEMORANDUM

FROM: Chairman Steve Brown

DATE: 12 April 2013

TO: Board of Commissioners

SUBJECT: Reimbursement for expenses related to defending the citizens of Fayette County

As you all know, former commissioner Robert Horgan filed an unfounded ethics complaint against me related to actions taken following former County Attorney Scott Bennett taking his hard drive from his county computer without proper authorization and wiping all the data clean.

The minutes from the March 13, 2013 Fayette County Ethics Board Hearing are attached, reflecting the dismissal of the complaint.

As you also know, I personally contacted each one of you to report the missing hard drive (later identified as Mr. Bennett's unacceptable behavior) and to discuss the proper action to recover county property and records.

Mr. Bennett's total disregard for authority and the Georgia Open Records Act resulted in two investigations, revealing Mr. Bennett was guilty of taking the hard drive and wiping the information from it and that he was in violation of his contract for practicing private law, without permission, when he was supposed to be working solely as the county attorney.

I am appalled by the fact that $2,128.85 had to be spent to defend my reporting a theft of county property containing highly sensitive and privileged legal data. A bill from The Whalen Law Firm, LLP is attached.

In my opinion, Mr. Horgan should be made responsible for covering this bill for making the frivolous allegations without conducting any research, although careless activity was par for the course during his tenure.

I am asking the Board of Commissioners to approve reimbursement in the amount of $2,128.85 for legal services rendered for the Horgan ethics complaint heard on March 13, 2013 where I was defending the best interests of the citizens of Fayette County by encouraging Board action related to county government property being removed without proper authorization and the destruction of vital government records covered under the Georgia Open Records Act.

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THE WHALEN LAW FIRM LLP
101 South Hill Street
P.O. Box 133
Griffin, Georgia 30224
770-227-9456
[redacted]

Steve Brown
[redacted]

Page: 1
April 04, 2013
[redacted]
Statement No: 2938

Attn: Steve Brown

Ethics Complaint

Fees

			Rate	Hours	
03/12/2013					
	AJW	Review file in preparation for hearing.	300.00	1.00	300.00
03/13/2013					
	AJW	Fayetteville - hearing before Ethics Board. MARCH 13, 2013	300.00	3.00	900.00
	JSW	Prepare for and attend hearing. Prepare Motion to Dismiss after researching effect of appeal of code professionalism allegedly isolated.	150.00	4.50	675.00
		For Current Services Rendered		8.50	1,875.00

Recapitulation

Timekeeper	Hours	Rate	Total
Andrew J. Whalen, III	4.00	$300.00	$1,200.00
Jessica Whatley	4.50	150.00	675.00

Expenses

03/07/2013	Fayette County Superior Court/file Notice of Appeal.	206.00
03/07/2013	Mileage to/from Fayette County Superior Court/file Notice of Appeal.	23.65
03/13/2013	Mileage to/from Fayette County Administration Build/Ethics Hearing.	24.20
	Total Expenses	253.85
	Total Current Work	2,128.85
	Balance Due	$2,128.85

Minutes

FAYETTE COUNTY ETHICS BOARD HEARING

MARCH 13, 2013

The Fayette County Ethics Board met in Open Session at 6:30 p.m. on March 13, 2013 in Fayette County's Public Meeting Room located at the Fayette County Administrative Complex, 140 Stonewall Avenue West, Suite 100, Fayetteville, Georgia 30214

Board Members:	Sheila Huddleston, Chair Larris Marks Scott Rowland
Staff:	Floyd L. Jones, County Clerk Tameca White, Executive Assistant

1. **Call to Order**

   Ms. Huddleston called the March 13, 2013 Ethics Board Hearing to order at 6:34 p.m.

2. **Acceptance of Agenda**

   Mr. Rowland moved to accept the Agenda. Mrs. Marks seconded the motion. No discussion followed. The motion passed unanimously.

3. **Selection of a Chairman of the Ethics Board (Refer to Sec. 2-213(a)(6).**

   Mrs. Marks moved for Ms. Huddleston to continue as Chairwoman of the Ethics Board. Mr. Rowland seconded the motion. No discussion followed. The motion passed unanimously.

4. **Approval of the February 11, 2013 Ethics Board Minutes.**

   Mr. Rowland moved to approve the February 11, 2013 Ethics Board Minutes. Mrs. Marks seconded the motion. No discussion followed. The motion passed unanimously.

5. **Hearing of an Ethics complaint filed by Robert Horgan (complainant) against Commissioner Steve Brown (respondent), and received by the County Clerk on January 23, 2013.**

a. Complainant will present case.

Chairwoman Huddleston read the complaint made by Mr. Robert Horgan against Commissioner Steve Brown into the record. A copy of the complaint, identified as "Attachment 1", follows these minutes and is made an official part hereof.

Attorney Andrew Whalen, representing Commissioner Brown, informed the Board that he had filed a motion to dismiss, saying it was dispositive, and that it should be heard first. Chairwoman Huddleston referred Mr. Whalen to Ethics Ordinance Section 2-203(c)(6)(m), and said the motion to dismiss would be entertained after the complainant made his case. Mr. Whalen agreed to wait until Mr. Horgan made his case.

Chairwoman Huddleston swore in both the complainant and respondent.

Mr. Horgan presented his case by saying he received a letter from Commissioner Brown that was sent to Chief Marshal Collins on January 4, 2013. Mr. Horgan said the most critical part of the letter, and the part that brought the Ethics charge was a section that read:

> *As part of my defense on the ethics charges, I was intending to request access to the data on the hard drives. I am requesting an official in-house investigation regarding the stolen hard drives, and ask that your department do everything within its official powers to recover the data which was subject to the Open Records Law and must be available at request of the courts. . . The Human Resources Department has contact information for Mr. Bennett.*

Mr. Horgan referred to Ethics Ordinance 2-209(n) and stated that Commissioner Brown gave a "direct directive" to Chief Collins. He added that there was no official meeting of the Board of Commissioners prior to the directive to have an investigation. He charged that it was very blatant that Commissioner Brown is having county staff do an investigation to provide evidence for him to use as defense in his ethics charge. Mr. Horgan closed his case saying that this was the basis of his charge.

Mr. Horgan did not call any witnesses.

Mrs. Marks read a section of Section 2-209(n) and asked Commissioner Horgan if he had any indication whether or not Commissioner Brown did not have authority or approval of the other commissioners. Mr. Horgan replied that the only indication was that something along the lines of an investigation should have required an official act such as an Executive Session meeting or something amongst the other commissioners that officially made this a part of a county process to have an investigation. Mrs. Marks asked Mr. Horgan if he had evidence showing a meeting did not occur, and Mr. Horgan replied that he did not have evidence showing a meeting did not occur.

b. Respondent entitled to move for dismissal.

Attorney Whalen again asked for a dismissal of the case. He claimed that Mr. Horgan did not set forth an ethics violation due to action taken by the Board of Commissioners on January 29, 2013 when the Board voted in a 4-0-1 vote to remove the second sentence from Section 2-209(n) of the Ethics Ordinance. Mr. Whalen contended that, given the Board's action, and with other cases with similar findings, such as *Robinson vs. The State*, *Cotton States Mutual Insurance Company vs. DeKalb County*, and *Nash vs. National Preferred Life Insurance Company*, that the Board of Commissioners had essentially removed the ability to proceed based on this particular complaint. Mr. Whalen closed his request by again asking for a dismissal.

Mrs. Marks noted that the legislative actions that Mr. Whalen brought forth involved factually similar circumstances to the current ethics complaint. She pointed out that the January 29, 2013 Board of Commissioners Minutes modified the Ethics Ordinance, and she added that, in relation to ethical standards, Commissioner Brown's actions were not done for personal gain but were done for the interest of Fayette County.

Mrs. Marks moved, based on the legislative citations and the decision of the Board of Commissioners, to dismiss the case. The motion failed for lack of a second.

Chairwoman Huddleston moved that the complaint be heard, and that the motion to dismiss be denied since the ordinance was not changed until after the fact. Mr. Rowland seconded the motion. No discussion followed. The motion passed 2-1 with Mrs. Marks voting in opposition.

Attorney Whalen objected to the Board going forward and suggested that hearing should be scheduled at the court. Chairwoman Huddleston referred to Sections 2-213(d)(1-2) and stated that it did not appear a judicial review was in order until there was a decision by the Ethics Board, since the objection may be a moot point. A copy of the motion to dismiss and case law presented by Attorney Whalen, identified as "Attachment 2", follow these minutes and are made an official part hereof.

c. Respondent will present evidence to the Board.

Mr. Rowland said there was some question as to whether Commissioner Brown had permission from the rest of the Board to "pursue with Chief Marshal Collins", and he asked Commissioner Brown if he was acting alone. Mr. Whalen replied that he had affidavits from all four Commissioners that he would provide to the Ethics Board. When Chairwoman Huddleston asked why the affidavits were not submitted before the hearing, Mr. Whalen replied that he did not have a reason to file before then.

Mr. Horgan objected to the submission of affidavits saying it violated Section 2-213(c)(6)(h). Chairwoman Huddleston agreed, but she said the affidavits would be allowed since it would be better to hear the evidence than to take it to Superior Court.

Rebuttal evidence was not presented by either the complainant or the respondent.

d. Ethics Board members to question any of the individuals who testified before the Board.

Chairwoman Huddleston pointed out that Ethics Ordinance 2-213(c)(6)(s) allows Board members to question the individuals who testified, and she asked Attorney Whalen if he would allow the Board to ask questions of Commissioner Brown. Mr. Whalen agreed to the request.

Chairwoman Huddleston asked Commissioner Brown what led him to write a letter to Chief Marshal Collins. Commissioner Brown replied that there was a situation on January 2, 2013 when an interim county attorney was brought to Fayette County. He said the interim attorney began work on January 3, 2013, and he wanted to access the hard drive to the computer in Mr. Bennett's office so he could retrieve any correspondence filings, open records, or legal documentation not subject to open records. Commissioner Brown continued explaining that the interim attorney asked Information System's staff to unlock the computer's password so he could access the documents, but the staff member was unable to open the computer or access the hard drive. He said it was discovered, after the staff member opened the CPU, that the hard drive had been taken. Commissioner Brown stated that there was an assumption that the hard drive had been stolen, and, since it contained legal correspondence, that possibility was a dire concern. Commissioner Brown said he spoke to his colleagues over the phone and in person, explained the situation to them, and suggested that some sort of investigation take place in an effort to immediately recover the information on the hard drive.

Mr. Rowland asked Commissioner Brown which colleagues he spoke to. Commissioner Brown named each of the four elected commissioners.

Chairwoman Huddleston asked if there were paper copies of the documents that were on the computer. Commissioner Brown replied "we have no idea" because the hard drive has been wiped professionally clean. He said the investigation from the Marshal's Office showed that he wiped the hard drive clean without authorization and that it was a direct violation of the Open Records Act since those records should be retained in a digital format. Chairwoman Huddleston replied that was not the issue at hand, but that the issue was whether or not Commissioner Brown acted alone or with the other commissioners.

Chairwoman Huddleston asked if Commissioners Ognio, Barlow, Oddo, and McCarty were in the audience, and it was determined that they were in the audience. Chairwoman Huddleston asked for the Commissioners to grant "leeway" so she could bring each Commissioner forward and swear them in.

Testimony of Commissioner Charles Oddo: Commissioner Oddo was brought forward and sworn in. He acknowledged that he was familiar with the affidavit shown to him, that his signature was on the affidavit, and that the affidavit was correct. Commissioner Oddo testified that Mr. Bennett was placed under investigation, that at least one other employee was investigated, but that the situation was discussed in general since "it was a very interesting situation." He testified that he talked to Commissioner Brown about the situation, but alluded that there was no formal meeting since commissioners are not allowed to meet more than two at a time. Mrs. Marks noted that how communication occurred between Commissioner Oddo and Commissioner Brown was not spelled out in the affidavit. She reminded the Board that it was looking at an official, signed affidavit by Commissioner Oddo, and she wanted the record to reflect that how the communication occurred was not evident. She said the point was that communication occurred, regardless of how it occurred. Commissioner Oddo agreed with Mrs. Mark's statement.

Mr. Horgan questioned Commissioner Oddo as well. During the questioning, Commissioner Oddo stated that there was a situation and its extent was unknown, that there was an awareness that "things were occurring", and that he was discussing former County Attorney Scott Bennett with Chairman Brown. When asked by Mr. Horgan why no names of employees being investigated was written in the affidavit, Commissioner Oddo replied that the situation was very fluid and that the Board was trying to determine the extent of it, but that Mr. Bennett was specifically discussed. The Ethics Board dismissed Commissioner Oddo. A copy of Commissioner Oddo's affidavit, identified as "Attachment 3", follows these minutes and is made an official part hereof.

Testimony of Commissioner Allen McCarty: Commissioner McCarty was brought forward and sworn in. Under oath, Commissioner McCarty spoke about a situation where a person comes into an office and discovers that the people that have control over particular items do not know that something is missing, and that a laptop is missing. He said the relevance of this issue was that the first thing a person would do upon finding missing items would be to call the police. Chairwoman Huddleston asked Commissioner McCarty if he was the one who first suggested that the police should be called. Commissioner McCarty replied that Commissioner Brown called him and asked if he should call the police. Commissioner McCarty testified that he told Commissioner Brown that he "absolutely should" call the police. He said whether or not one or more employees were involved was unknown, but the item was gone, it was unknown who took it, and that an investigation had to be started to find out where the item was. He reiterated that he was absolutely inclined to call the County Marshal and get an investigation started.

Mr. Rowland pointed out that the affidavit stated county employees were to be investigated, acknowledged that Scott Bennett had already been named, and asked which other employees were to be investigated. Commissioner McCarty replied that at the time it was unknown who took the hard drive, although there was suspicion. He said it was an open request to call the Marshal to find out who, "as in the plural who", took it. Commissioner McCarty acknowledged that the assumption was that an employee was involved who would have access to the building and open a locked office.

Mr. Horgan asked why he okayed an investigation into Scott Bennett if it was unknown who took the item. Commissioner McCarty replied that it involved Mr. Bennett's computer. Mr. Horgan pointed out that the letter specifically stated to do an investigation on Scott Bennett's computer, and Commissioner McCarty agreed saying it was Mr. Bennett's computer. Mr. Horgan asked why the police were not called. Commissioner McCarty replied that the Marshals were called, and they are the County's police. Mr. Horgan asked Commissioner McCarty if he considered the action a criminal action. Commissioner McCarty replied that he did not know what it was, but it would take an investigation from the Marshal's Department to determine if it was a criminal action and who did it. The Ethics Board dismissed Commissioner McCarty. A copy of Commissioner McCarty's affidavit, identified as "Attachment 4", follows these minutes and is made an official part hereof.

Testimony of Commissioner Randy Ognio: Commissioner Ognio was brought forward and sworn in. He testified that he was familiar with the affidavit and that his signature was on the affidavit. When asked if he could tell which employees were under investigation, Commissioner Ognio replied that he did not know, that all that was known was that county property was missing, and no one knew if it concerned one or more employees. Mr. Rowland asked Commissioner Ognio how he was contacted, and Commissioner Ognio replied that he was contacted over the phone. Mr. Horgan did not ask

questions of Commissioner Ognio. The Ethics Board dismissed Commissioner Ognio. A copy of Commissioner Ognio's affidavit, identified as "Attachment 5", follows these minutes and is made an official part hereof.

Testimony of Commissioner David Barlow: Commissioner Barlow was brought forward and sworn in. He testified that he was familiar with the affidavit and that his signature was on the affidavit. He stated that he was contacted by Commissioner Brown via telephone. When asked by Chairwoman Huddleston which employees were under investigation, Commissioner Barlow replied that it was his understanding that Mr. Bennett's hard drive and laptop were missing, and it was further discovered that former County Administrator Jack Krakeel's hard drive had "been wiped". He said he had concerns that a county employee was complicit with destroying government property, so he encouraged Commissioner Brown to contact the authorities as rapidly as possible to obtain the hard drives in an effort to recover the information. Mr. Rowland asked Commissioner Barlow if he knew the investigation was directed to any former county employees. Commissioner Barlow replied that at the time both Mr. Bennett and Mr. Krakeel were former employees.

Mr. Horgan asked Commissioner Barlow if, when they talked on the phone, there was discussion to investigate two or three employees. Commissioner Barlow replied that a number was not discussed, but that the two employees mentioned to him were Mr. Bennett and Mr. Krakeel. Mr. Horgan asked why the letter to the Marshal's only included Scott Bennett's name, but not Jack Krakeel's name. Commissioner Barlow replied that Mr. Bennett's hard drive and laptop were missing while Mr. Krakeel's hard drive was obtainable although it had been wiped. He said there was an effort to determine who gave the authorization to destroy and erase government property. Mr. Horgan asked Commissioner Barlow if, during the phone conversation, Commissioner Brown discussed the need to have information for his defense on ethics charges. Commissioner Barlow testified that the issue was not brought up. Mr. Horgan asked why Commissioner Brown mentioned the ethics issue in his letter to the Marshal's Department. Commissioner Barlow replied that he did not know, but suggested that Mr. Horgan ask Commissioner Brown. The Ethics Board dismissed Commissioner Barlow. A copy of Commissioner Barlow's affidavit, identified as "Attachment 6", follows these minutes and is made an official part hereof.

e. Chairman shall call for a vote or a continuance at the end of deliberations (Refer to Sec. 2-213(c)(6)(u).

Chairwoman Huddleston moved, based on the information that was heard and the affidavits that were presented, to dismiss the complaint against Commissioner Brown. Mrs. Marks seconded the motion. No discussion followed. The motion passed 2-1 with Mr. Rowland voting in opposition.

Chairwoman Huddleston announced that the complaint was dismissed.

6. Adjournment

Chairwoman Huddleston adjourned the March 13, 2013 Ethics Board Hearing at 7:19 p.m.

Floyd L. Jones, County Clerk

Larris Marks, Vice-Chairwoman

The foregoing minutes were duly approved at an official meeting of the Fayette County Ethics Board held on the 20th day of March 2013.

Floyd L. Jones, County Clerk