

**MEETING MINUTES
GWINNETT COUNTY ETHICS BOARD
ORGANIZATIONAL MEETING**

Gwinnett Justice and Administrative Center
Conference Room A
75 Langley Drive
Lawrenceville, GA 30046

Wednesday, October 30, 2019 @ 10 AM

Ethics Board Members in Attendance: David Will, Shaun Adams, Scott Drake, Fred Love, and Daniel King.

I. Call to Order

- A. Mr. R. Read Gignilliat introduced himself and Holly E. McDaniel as the Ethics Board's legal counsel.
- B. Mr. Gignilliat explained that, while he does not have an active role, the task of opening the organizational meeting fell to him because a Chairperson and Vice-Chairperson had not yet been selected by the Ethics Board.

II. Introductions, Qualifications & Empanelment of Ethics Board (Sec. 54-37(d)(1))

- A. Introductions and Qualifications: Appointees David Will, Shaun Adams, Scott Drake, Fred Love, and Daniel King were introduced by Mr. Gignilliat who also identified which entities appointed them to the Ethics Board..
- B. Qualifications: Mr. Gignilliat elicited information from each appointee regarding his qualifications in accordance with the Ethics Code and introduced documentation relating to the appointments of Fred Love and Daniel King. (Attachments A-1 and A-2.)
- C. Empanelment: Mr. Gignilliat announced that the five (5) appointees were qualified and properly appointed in accordance with the Ethics Ordinance and declared their empanelment as members of the Ethics Board.

III. Selection of Chairman & Vice Chairman (Sec. 54-37(a)(6))

- A. Selection of Ethics Board Chairperson: Following discussion between Ethics Board Members and Mr. Gignilliat, Ethics Board Member David Will was selected to serve as Chairperson.
 - 1. Motion: Ethics Board Member Daniel King formally nominated Ethics Board Member Will to serve as Chairperson.

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2. Second: Ethics Board Member Shaun Adams and Fred Love seconded the nomination of Ethics Board Member Will to serve as Chairperson.
 3. Vote: The Ethics Board Members unanimously voted to approve the nomination of Ethics Board Member Will to serve as Chairperson.
 - a. For: Adams, Drake, Love, and King.
 - b. Opposed: None.
- A. Selection of Ethics Board Vice Chairperson: Following discussion between Ethics Board Members and Mr. Gignilliat, Ethics Board Member Scott Drake was selected to serve as Vice Chairperson.
1. Motion: Ethics Board Member Drake volunteered to serve as Vice Chairperson and Ethics Board Member Will moved that he be selected to so serve.
 2. Second: Ethics Board Member Adams seconded the nomination of Ethics Board Member Drake to serve as Vice Chairperson.
 3. Vote: The Ethics Board Members unanimously voted to approve the nomination of Ethics Board Member Drake to serve as Vice Chairperson.
 - a. For: Will, Adams, Love, and King.
 - b. Opposed: None.

IV. Notice of Right to Reply to Complaint (Sec, 54-37(a)(8))

- A. Notice of Right to Reply: Mr. Gignilliat advised the Ethics Board that it is required by the Code of Ethics to notify Respondent Fosque, in writing, of her Right to Reply to the Complaint filed against her.
1. Review of Notice: Mr. Gignilliat presented to the Ethics Board the draft Notice of the Right to Reply. The Ethics Board reviewed the Notice of Right to Reply to be issued to Respondent Fosque.
 2. Approval and Signing of Notice: Ethics Board Chairperson Will approved the draft Notice of Right to Reply via signature. (Attachment B.)

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3. Timeline: Mr. Steven Reilly, counsel to Commissioner Fosque, confirmed his intention to reply to Complainant King's Complaint within thirty (30) days of the organizational meeting.
 4. Information Requested: Ethics Board Member King requested that Mr. Reilly address the First Amendment implications of Complainant King's claims, including whether Complainant King qualifies as a public figure. Mr. Reilly was also asked to address whether any sort of privilege is applicable to Commissioner Fosque's alleged comments.
- B. Direction to Administrative Aide: The designated Administrative Aide to the Ethics Board, Julie Mims, hand-delivered the Notice of Right to Reply to Respondent Fosque upon adjournment of the meeting.

V. Adoption of Procedural Rules (Sec. 54-37(a)(6))

- A. Authorization to Adopt Procedural Rules: Mr. Gignilliat advised the Ethics Board that the Code of Ethics contemplates a future evidentiary hearing on the Complaint conducted by the Ethics Board and the adoption of Procedural Rules by the Ethics Board.
- B. Discussion of Specific Procedural Rules: Mr. Gignilliat and the Ethics Board then discussed his recommendations regarding Procedural Rules. The Ethics Board then expressed its approval of Procedural Rules. (Attachment C.)
- C. Ethics Board Member King inquired into whether there was any provision for mediation of the underlying dispute. Mr. Gignilliat explained that the Ethics Ordinance neither requires nor prohibits this action. After discussion among the Ethics Board members, Mr. Gignilliat was directed by the Chairperson to contact the Complainant to inquire into his interest in pursuing alternative dispute resolution to resolve his claims.
- D. Following discussion between Ethics Board Members as to the Procedural Rules, the Ethics Board Members voted to approve and adopt the proposed Procedural Rules, as reflected in Attachment C.
 1. Motion: Ethics Board Vice Chairperson Drake moved to approve and adopt the proposed Procedural Rules, as reflected in Attachment C.
 2. Second: Ethics Board Chairperson Will seconded the motion of Ethics Board Vice Chairperson Drake.

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3. Vote: The Ethics Board Members unanimously voted to approve the proposed Procedural Rules, as reflected in Attachment C, via Chairperson Will's signature.
 - a. For: Ethics Board Members Will, Drake, Love, King, and Adams
 - b. Opposed: None.

VI. County Ethics Training Video

- A. All of the Board members viewed the County Ethics Training Video.
- B. Mr. Gignilliat reported to the Ethics Board Members that, since creation of the training video, the County's Ethics Ordinance has been revised to replace the ACCG appointment with one selected by the Local Government Section Chairperson of the State Bar of Georgia. The ordinance has also since been re-codified.

VII. Scheduling of Next Meeting of the Board

- A. Schedule: The Chairperson then tentatively set the preliminary hearing of the Ethics Board for December 9, 2019 at 10 AM following discussion with fellow Ethics Board Members about scheduling. In addition, the Chairperson proposed December 19, 2019 at 10 AM for the evidentiary hearing. It was noted that the Complainant was not present to participate in the scheduling process, so Mr. Gignilliat was directed to contact the Complainant to notify him of the proposed dates and request that he confirm his availability.
- B. The Chairperson also determined that, subject to availability, the location of the meeting will be:

Gwinnett Justice and Administrative Center
Conference Room A
75 Langley Drive
Lawrenceville, GA 30046

VII. Other Matters

- A. Questioning on Additional Matters from Commissioner Fosque: Chairperson Will asked Commissioner Fosque's counsel if he had any additional matters to bring before the Ethics Board. Mr. Reilly answered in the negative.

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B. Procedural Questions: Ethics Board Member King raised several procedural questions with the Ethics Board including whether the Board may solicit evidence of its own volition and what standard of proof applies to the proceedings. After discussion among Board Members, it was determined that the Board may solicit evidence it requires to make its determination even if such evidence is not presented by the parties themselves. Mr. Gignilliat cautioned the Ethics Board Members that they may not conduct independent investigations of the underlying claims and that they may only consider evidence presented during the hearing. Chairperson Will explained to the Ethics Board that the standard of proof for the upcoming hearing is preponderance of the evidence.

VIII. Adjourn

A. Adjournment: The Ethics Board Members voted to adjourn the meeting.

1. Motion: Ethics Board Member Love moved to adjourn the meeting.

2. Second: Ethics Board Member King seconded the motion to adjourn the meeting.

3. Vote: The Ethics Board Members unanimously voted to adjourn the meeting.

a. For: Ethics Board Members Will, Drake, King, Love, and Adams.

b. Opposed: None.



MEMORANDUM

TO: D.A. King v. Marlene Fosque Ethics Complaint / Our File No. 2019-1539

FROM: Michael P. Ludwiczak *ML*
County Attorney

DATE: October 11, 2019

RE: District Attorney Ethics Board Appointment

Per the District Attorney's Office, the District Attorney's appointment to the Ethics Board will be made from the Panel A Grand Jury which does not meet until Wednesday, October 16th. Under the circumstances, this meets the requirement of Sec. 54-37(a)(5) of the Ethics Ordinance that appointments be made "within 30 days after receiving the complaint or as soon thereafter as practicable."



MEMORANDUM

TO: D.A. King v. Marlene Fosque Ethics Complaint / Our File No. 2019-1539

FROM: Michael P. Ludwiczak *ML*
County Attorney

DATE: October 11, 2019

RE: Board of Commissioners' Ethics Board Appointment

Per the Board of Commissioners' Office, the appointment to the Ethics Board will be considered and voted on at the next Board of Commissioners' Meeting, which does not occur until Tuesday, October 15th. Under the circumstances, this meets the requirement of Sec. 54-37(a)(5) of the Ethics Ordinance that appointments be made "within 30 days after receiving the complaint or as soon thereafter as practicable."

**GWINNETT COUNTY ETHICS BOARD
STATE OF GEORGIA**

Donald "D.A." King,)	
)	
Complainant)	Ethics Board Proceedings
)	Initiated pursuant to Sec.
v.)	54-37(a) of the Gwinnett
)	County Code of Ethics.
Commissioner Marlene)	
Fosque,)	
)	
Respondent.)	

**NOTICE OF RIGHT TO REPLY TO
ETHICS COMPLAINT**

**TO: Marlene Fosque
Commissioner, District 4
C/o Steven M. Reilly
Andrew Merritt Reilly & Smith LLP
7 Lumpkin St., P.O. Box 753
Lawrenceville, GA 30046-0753**

WHEREAS, a complaint was filed against you on August 21, 2019, pursuant to Section 54-37(a) of the Gwinnett County Code of Ethics by Donald Arthur ("D.A.") King, 2984 Lowe Trail, Marietta, GA, 30066; and

WHEREAS, the complaint was amended on August 22, 2019; and; and

WHEREAS, the complaint, as amended, was deemed compliant with the technical requirements of the Gwinnett County Code of Ethics on September 11, 2019; and

WHEREAS, a copy of the complaint, as amended, was forwarded to you on or about September 13, 2019; and

WHEREAS, the Gwinnett County Ethics Board was duly empaneled and held its organizational meeting on October 30, 2019.

NOW, THEREFORE, PLEASE TAKE NOTICE that you have the right to file a reply to the aforementioned complaint, as amended, within thirty (30) days of this date unless such time is extended by the Ethics Board upon a showing of good cause; that any such reply should be submitted in writing to the Ethics Board, c/o Julie Mims, via email at Julie.Mims@gwinnettcounty.com; that a copy of any such reply also be sent to counsel for the Ethics Board, Read Gigniliat, via email at gigniliat@elarbeethompson.com; that upon receipt of any such reply, it shall be made a part of the record of these proceedings for all purposes; and that the Ethics Board shall promptly forward a copy of any such reply to the above-named complainant.

GWINNETT COUNTY ETHICS BOARD

Dated: October 30, 2019

BY: 
Chairperson

GWINNETT COUNTY ETHICS BOARD

PROCEDURAL RULES

Pursuant to Section 54-37(a)(6) of the Code of Ethics, the following procedural rules will govern proceedings before the Gwinnett County Ethics Board empaneled on October 30, 2019.

1. Appointed Administrative Aide to Serve as Clerk to the Ethics Board.

a. The administrative employee appointed by the County Attorney pursuant to Section 54-37(d)(4) of the Code of Ethics will assist the Chairman and the Ethics Board in the capacity as a de facto Clerk to the Ethics Board.

b. The Clerk will assist in the preparation and timely publishing of notices and agendas of all meetings, assist in the recording of the minutes of all meetings, and ensure the timely posting of such minutes, both unofficial and regular, all in accordance with O.C.G.A. § 50-14-1, et seq.

c. The Clerk will facilitate the scheduling of all meetings of the Ethics Board, including ensuring the availability of a suitable meeting room, A/V equipment, and a court reporter or other necessary personnel.

d. Any Open Records Act request and other written communication relating to proceedings before the Ethics Board, including any request for issuance of a subpoena, proof of service of a subpoena, witness and exhibit lists, objections, motions, request for a continuance or extension of a deadline, or notice of appearance or withdrawal shall be submitted or copied to the Clerk.

2. Motions to Disqualify or for Recusal of Ethics Board Member; Objections to Appointment.

a. Any party wishing to seek the disqualification or recusal of any member of the Ethics Board or to object to the appointment or eligibility of any member of the Ethics Board must file an appropriate motion or raise such objection at or within seven (7) calendar days of the Ethics Board's organizational meeting.

b. Any motion or objection filed or raised in accordance with the preceding paragraph must state with specificity the factual basis for the requested relief as well as the provision of the Ethics Ordinance or other legal authority supporting same.

ATTACHMENT C

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PROCEDURAL RULES

c. Any factual or legal basis for seeking the disqualification or recusal of any member of the Ethics Board or any objection to the appointment or eligibility of any member of the Ethics Board not raised within the time or in the manner required by this Section 2 shall be deemed waived.

3. Evidentiary Rulings: Delegation of Authority to Chairman.

a. To facilitate efficient and orderly proceedings, the Chairman is authorized to make initial rulings regarding evidentiary matters, including rulings regarding admissibility and such issues as the scope, relevance, or duration of testimony or proposed testimony. The Chairman may issue such rulings on his own initiative or in response to an objection, request, or motion by a party to the proceedings and, in so doing, may make reasonable inquiries or request offers of proof.

b. All requests for issuance of subpoenas pursuant to Section 54-37(b)(2) of the Code of Ethics shall be directed to the Chairman within the time period established by these procedural rules. The Chairman is authorized to make initial rulings on such requests. It is the responsibility of the requesting party to ensure the proper service of any subpoena issued pursuant to this rule and to promptly submit proof of service.

c. Notwithstanding the foregoing, any member of the Ethics Board may request further discussion of an initial evidentiary ruling made by the Chairman and any such ruling thereafter may be reversed or modified by the Chairman or by majority vote of the Board.

d. In addition to the facilitation of efficiency and order, initial rulings will be based on general evidentiary principles common to administrative proceedings of this nature with particular consideration given to the specific factual allegations of the complaint, the specific violations alleged, and the Ethics Board's status as an investigative body.

4. Pre-Hearing Conference.

To facilitate an efficient and orderly evidentiary hearing, the Chairman may schedule a meeting of the Ethics Board to precede the hearing and serve as a pre-

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hearing conference for addressing any evidentiary, procedural, or other issues deemed advisable to resolve in advance of the hearing.

5. Witness Lists and Exhibit Lists; Subpoenas; Motions.

a. No later than seven (7) calendar days prior to the pre-hearing conference or, if no pre-hearing conference is held, no later than seven (7) calendar days prior to the evidentiary hearing, the parties shall identify, in writing, all witnesses, exhibits, or other evidence they intend to call or introduce at the hearing. In so doing, the parties shall succinctly describe the anticipated testimony of each witness and, unless otherwise apparent, the element of proof addressed by each exhibit or other item of evidence.

b. Requests for subpoenas should be submitted within the time set forth in sub-paragraph (a) of this rule. The party requesting and serving the subpoena shall be solely responsible for taking any and all required steps to enforce compliance with same. Once scheduled, the hearing will not be continued automatically to enable either or both parties to seek enforcement of a subpoena; rather, any request for continuance must be made in accordance with Rule 7 of these Procedural Rules.

c. Absent good cause, no witness may testify and no exhibit or other evidence may be introduced at the evidentiary hearing, and no subpoena will be issued, unless timely identified or requested in accordance with this rule. The determination of whether good cause has been shown shall be regarded as an initial evidentiary ruling under Rule 2.

d. No later than three (3) calendar days prior to the pre-hearing conference or, if no pre-hearing conference is held, no later than three (3) calendar days prior to the evidentiary hearing, the parties shall submit any objections they may have to any witness, exhibit, or other evidence identified or any subpoena requested as provided in sub-paragraph (a) of this Rule.

e. Any motion relating to the evidentiary hearing should be submitted within the time set forth in sub-paragraph (a) of this rule to the extent the need for the motion can be reasonably anticipated by the moving party. The response to any such motion should be submitted within the time set forth in sub-paragraph (d) of this rule.

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6. Court Reporter.

The evidentiary hearing conducted by the Ethics Board will be recorded by a duly licensed/certified court reporter who will prepare a transcript thereof. Unless otherwise directed by the Chairperson or by majority vote of the Ethics Board, a court reporter will similarly be retained for any other meeting of the Ethics Board; provided, however, that no transcript of any such meeting will be prepared unless expressly directed by the Chairperson or by majority vote of the Ethics Board.

7. Continuances and Extensions.

The Chairman may grant a written request for a continuance of a scheduled meeting or hearing or the extension of a deadline established by these rules for good cause.

8. Witness Testimony.

All witnesses presenting testimony at the evidentiary hearing shall first be placed under oath or affirmation substantially as follows: "Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?"

9. Opening Statements; Closing Arguments; Time Limits.

a. The Ethics Board retains the sole discretion whether to require or allow opening statements and/or closing arguments at the evidentiary hearing, including whether to require or allow post-hearing briefs and/or proposed findings and conclusions in lieu of or in addition to closing arguments.

b. The Ethics Board retains sole discretion to set reasonable time limits on opening statements (if any), closing arguments (if any), witness testimony, and the overall presentation of each party's case. In exercising its discretion in this regard, the Ethics Board will give due consideration to providing each party with a fair and reasonable opportunity to present their respective cases, as well as the facilitation of efficiency and order and the investigative purpose of the hearing.

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10. Legal Counsel.

a. All parties may be represented by legal counsel at their own expense; however, no attorney may actively participate in the evidentiary hearing on behalf of a party unless first submitting a written notice of appearance at least twenty-four (24) hours in advance of the hearing.

b. Should it become necessary for an attorney to withdraw from representation of a party, written notice of withdrawal should be submitted as soon as possible. It is the party's responsibility to ensure that timely notice of withdrawal is submitted, and the failure to do so may result in the denial of any request for continuance, extension, or other relief.

11. Miscellaneous.

a. Ex parte communications with the members of the Ethics Board are prohibited.

b. In presiding over any meeting or hearing of the Ethics Board, the Chairperson shall preserve order and decorum and, if necessary, shall take any lawful steps he reasonably deems warranted or appropriate to resolve any disruption, interference, or other factor impeding the purpose or undermining the integrity of the proceedings.

c. Should the Chairperson be absent from any meeting or hearing of the Ethics Board, and assuming the presence of a quorum, the Vice Chairperson shall have all authority and discretion placed in the Chairperson by these Procedural Rules and by the Code of Ethics.

12. Amendment of Procedural Rules.

These Procedural Rules may be amended, rescinded, or otherwise modified by majority vote of the Ethics Board within their sole discretion.

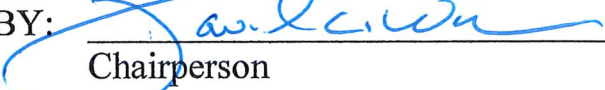
13. Rescission of Procedural Rules.

These rules shall be deemed rescinded upon expiration of the Ethics Board's service pursuant to Section 54-37(d)(3) of the Code of Ethics.

GWINNETT COUNTY ETHICS BOARD PROCEDURAL RULES

GWINNETT COUNTY ETHICS BOARD

Dated: October 30, 2019.

BY: 
Chairperson