Denver Board of Ethics
Minutes
Meeting of January 5, 2022

Chair Joseph G. Michaels called the meeting of the Denver Board of Ethics to order at 9:05 a.m. The Board met virtually through Microsoft Teams, and the public meeting was open to interested parties by joining virtually or by telephone. Present in-person were Board members Joseph G. Michaels, Dianne Criswell, Jane T. Feldman, Doris E. Burd, and Rory McLuster. Also in attendance were Jordan Humphreys, Senior Assistant City Attorney, and Executive Director Lori Weiser.

1. Welcome, introductory remarks, and review of the Agenda.
2. The Draft Minutes of the Board’s December 8, 2021 meeting were moved, seconded, and approved unanimously, with clarification, by a vote of 5-0.
3. Chair Joseph Michaels remarked that the Board of Ethics shifted back to conducting its meeting fully remotely in response to the COVID-19 Virus and the Omicron variant. The Chair noted that Mayor Hancock stated at a press conference on January 4, 2022, that the Denver area is seeing roughly a 25% positivity rate which means that one of every four people testing for the COVID virus is positive. It was also noted that this number didn’t take into account the at-home tests or persons who were asymptomatic and were not testing. The Chair recognized that the area was facing nearly overwhelmed hospitals with the largest case numbers the pandemic has seen and stated that judicial districts around the metro region transitioned to conducting business remotely as did Denver City Council. Ultimately, in making the decision to have a virtual meeting, the Chair stated that the Board was doing its part to ensure both continued transparency and ethics accountability and also to ensure community protection and the protection of the Board members. The Board strongly considered meeting in person to discuss the complaints that were listed in the executive session agenda. Pursuant city ordinance, attendance at executive session must be in-person at a designated location, and no member or participant is authorized to appear by electronic means. That gave the Board significant pause in
terms of whether to meet in-person or virtually. Ultimately it was determined that community protection and safety of members were more important than being able to screen and deliberate on pending complaints. The Chair concluded by saying that the Board will eventually consider the complaints when it is safe to gather in-person, or at such time as City Council suspends the in-person requirement for the existence of good cause or of public health and safety.

4. Vice Chair Dianne Criswell concurred with the comments of the Chair, stating that she understands the policy purpose of having an executive session in-person in that it meets up with the broader policy purpose of the open meetings laws. However, she noted that even outside of a global pandemic, for a volunteer board to have remote meetings as an option is a good way to encourage service amongst people that are busy that might be unable to attend in-person. Ms. Criswell further stated that she believes that there is a way of balancing the competing interests even outside of a public emergency. Within a public health emergency, Ms. Criswell suggested that the Board give direction to the Executive Director to contact City Council to discuss these concerns and seek feedback about Council’s willingness to make changes. She asked that it be noted that the in-person requirement for executive sessions was adopted at the same time that the Board’s authority changed to allow for confidential complaints. Ultimately, Ms. Criswell stated that she believes that the in-person requirement also puts the Board in a position of having to weigh public health against the interests of persons making complaints and inquiries, and that the requirement may raise employment law issues that are general or specific to a pandemic.

5. Member Jane Feldman also concurred, stating that in September or October of 2021, she was notified that she’d been exposed to a person who tested positive for the COVID-19 virus. She received a PCR test but didn’t have results of tests in time for the monthly meeting, so she did not attend in-person and was unable to participate in the executive session during which several important complaints were discussed. She found herself in a similar situation for this meeting. She agreed that given the difficulties of testing, and vagaries of exposure, allowing boards and commissions to meet in executive session remotely would not only benefit individual members, but the Board as a whole.

6. The Board welcomed Mr. Eric Duvall and Ms. Stacy Hafner from the DNA Unit of the Denver Police Department’s Crime Laboratory within the Denver Department of Public Safety. Mr. Duvall and Ms. Hafner provided an update concerning a waiver that had previously been granted by the Board of Ethics in case number 21-16. Specifically, Ms. Hafner and Mr. Duvall reported that they held a section meeting with all members of the DNA unit, and a supervisor’s meeting that included the Deputy Director and the Director of the Crime Laboratory. The communication plan has been followed and the Deputy Director has been the point of contact for all
financial matters concerning the grant. The unit also began working toward the 40 hours of training and the remainder of the training hours will be completed in January of 2022. The Board thanked Mr. Duvall and Ms. Hafner for being diligent with respect to the conditions of the waiver, and for reporting back with respect to the progress made. Mr. Duvall and Ms. Hafner will return to the Board of Ethics in one year and will share successes with the Executive Director as they occur.

7. In case number 21-62, the Board welcomed Ms. Robin Filipczak from the Denver Public Library and discussed her request for an advisory opinion. After considering the facts, the Board determined that volunteering as treasurer for a friend’s campaign for an at large city council seat in 2023 would not violate the Denver Code of Ethics, so long as she heeds the cautions suggested by the Board of Ethics. It was moved, seconded, and unanimously approved by a vote of 5-0 to issue an advisory opinion consistent with this discussion.

8. The Board next explored the opportunities to work with City Council to build on the provisions of the Ethics Code. Several ideas were considered, and two members agreed to work on draft language for the Board’s future review.

9. Vice-Chair Dianne Criswell suggested that the Board and the Board’s Executive Director be mindful of developing a business case for expansion as the budget season approaches. Member Rory McLuster encouraged there to be an emphasis on the work that isn’t getting done due to lack of capacity and suggested that there be thought as to what resource might best that work. Chair Joseph G. Michaels recommended time tracking outside of core business hours. Vice-Chair Dianne Criswell also suggested that fellows be considered as well. Further, Ms. Criswell recommended reaching out to capstone schools, to see if there might be assistance with researching and compiling data.

10. The Board’s Rules of Procedures with respect to anonymous complaints were discussed. The Board agreed that some amendments to the current Rules would be appropriate and tasked the Executive Director with redlining the existing rules for reconsideration at the February 2022 meeting of the Board.

11. Vice Chair Dianne Criswell suggested that the Board consider utilizing a consent calendar that could allow for greater efficiency with matters that are routine and do not require discussion or deliberation.

12. The Board discussed meeting dates for the calendar year 2022 and determined that the meetings will occur on the first Wednesday of each month going forward.

13. At 11:02 a.m. a motion to adjourn the meeting was made, seconded, and unanimously approved by a vote of 5-0 and the meeting was adjourned.
NOTE: Copies of the written decisions in the cases mentioned above or any other cases may be obtained by contacting the Board’s Executive Director, Lori Weiser—lori.weiser@denvergov.org.

APPROVED BY THE BOARD: February 2, 2022