



# City of La Crosse, Wisconsin

City Hall  
400 La Crosse Street  
La Crosse, WI 54601

## Meeting Minutes

### Ethics Board

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Friday, March 1, 2019

9:00 AM

3rd Floor Conference Room

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#### Call to Order

*Vice Chair Don Campbell called the meeting to order. Members introduced themselves.*

#### Roll Call

**Present:** 3 - Donald Campbell, Taylor Haley, Jodi Widuch

**Excused:** 1 - Larry Klahn

*Others Present: Teri Lehrke, Stephen Matty, Paul Fredrickson, Dan Ryan, Jacky Greschner, Frank Schwarz, Valerie Fenske, Dave Buroker*

#### Election of Officers

*Chair recommended deferring the election of officers until all members are present. Members concurred.*

#### Annual Review of the Code of Ethics

*Members confirmed annual review.*

#### Complaint filed by Frank Schwarz

*Chair acknowledged receipt of the Complaint by Board members and a response to Ms. Greschner's response, along with the list of projects the complainant worked on while employed with the city. This morning Mr. Schwarz provided each member of the Board and Ms. Greschner a notebook of information, some of which includes copies of documents mentioned and summary comments and a copy of his performance evaluations and some correspondence with the City that had to do with him being placed on leave and termination. The Board also received a Response to the Complaint from Attorney Dan Ryan who is counsel for Ms. Greschner.*

*Stephen Matty as legal counsel for the Ethics Board addressed the Board. The role of Legal Department is to advise the Ethics Board and help them with their decision and duties. As a governmental body, we are required to comply with Open Meetings Law. The public has an opportunity to observe, unless the Board convenes into closed session. There is no right to public participation. There is only an opportunity to talk if the Board gives them the ability to do so. The Ethics Board role is to be the judge; to be impartial; and to decide based on the information. There can be no direct contact*

with either party. Either the City Clerk or City Attorney's office will communicate on the Board's behalf to maintain impartiality. When complaints are filed, the person who files the same carries their case forward. The City does not represent them, and it is not the Board's job either. A complaint has been filed, a response was made, and reply to the response supplied earlier. There are two issues today – whether there is probable cause to move forward to a hearing, and if an investigation is necessary. If probable cause is not found, the matter is done. If probable cause is determined, then we look at scheduling the next proceedings – like a trial with sworn testimony. The meeting today is just looking at the submitted documents and possibly hearing arguments from both parties. In order to help to decide probable cause, the Board has the ability to order a preliminary investigation, where a third party comes in and looks at the allegations, does further investigations in order to help the Board make a determination. The Board has the ability to do that. In the past, at this stage the Board has provided opportunities for the parties to provide written submissions and given an opportunity for people to advocate one way or another. In the past the Board has put together timeframes and possible meeting dates. In this case, submissions were made ahead of time, in addition to what was submitted today. The Board should verify if the accused has received a copy today. The Board should also ask the parties if they are prepared for a decision to be made, whether the Board or others have enough information in order to make a decision. Depending on the answer, the Board may schedule another meeting so there is time to prepare. Since another submission was made today, the accused may want additional time to address those issues. Today is not a trial; not taking evidence or testimony. The issue is to determine whether there is probable cause and if an investigation needed. Talk to the parties and ask them if they are prepared for a decision to be made today.

Attorney Ryan stated a copy of Mr. Schwarz' materials distributed today were received by the respondent today, and they are willing to proceed with a decision today.

Schwarz stated he made a late submission because he wasn't sure how much time the Board would give to this matter and he wanted to summarize it. He stated he highlighted comments in the performance evaluations; there were no comments that say poor or unsatisfactory. He said it was important for him to get it out there. He became a for cause employee. It bothered him when he was fired; protested as soon as he heard that in his termination hearing. What started all this was a task he was required to do, and a decision was based upon that. Additional charges of poor performance didn't set well with him. In the investigation, why was that ignored in the city's categorization? If a merit-based employee, why can you be thrown out as a poor performer if there are no previous incidents? Those charges were added after the fact; beyond when the decision was made. The predetermination hearing didn't have any of that. Wants to know why a merit-based employee is called poor performer. Human Resources doesn't have documentation of poor performance. Allegations are unfounded.

Attorney Ryan argued that this is a point in the proceeding where the Board should weed out if a serious ethics complaint citing to a specific part of the ethics code was violated and provides facts that were in violation, versus a less serious complaint based on personal reasons because of being upset and fired. The complaint has no allegation or citation to a part of the ethics code that was supposedly violated. The closest the complaint comes is providing a state statute for a crime for misconduct in public office. That is a felony that can be used if a public official takes a bribe. In this case the allegation is that Ms. Greschner acted beyond lawful authority in terminating Mr. Schwarz. The complaint says Mr. Schwarz doesn't agree with the decision and should have considered other things. It is not the Board's role to second

*guess a decision to terminate an employee. The Board's role is to see if there was a violation of the ethics code. This was not an easy decision to terminate the employee's employment. Ms. Greschner is not an attorney and has to worry about following the rules. It wasn't done lightly. There was an investigation and there is a copy of the police report from the investigation, there was very close consultation with Human Resources personnel within the city, and close consultation with an outside attorney that the city hires to guide them through the process. The complaint is more about Mr. Schwarz being upset with the termination decision, and doesn't think it is about an ethics violation.*

*Schwarz stated his rebuttal is the 946.12 statute, parts (2) and (4). From his point of view, it is false to say there were ongoing performance issues. Part (2) of misconduct is when you take authority beyond your realm of authority. She added charges of bad performance which is a lie; he has facts to back that up. When she added that, it is going beyond her authority. No one else would say he was a bad employee. It was hard time for him the week before Christmas.*

*Chair asked if respondent is prepared for the Board to proceed with a decision, even though they may not have had a chance to review today's decision. Attorney Ryan stated they are prepared for a decision today. Schwarz stated he wants the Board to look at his performance evaluations submitted today, and if the Board can answer the questions and come up with a decision, then he hopes it is a truthful decision.*

*Chair stated the matter before the Board is 1) whether we wish to have a more formal preliminary investigation and 2) to determine if there is probable cause. A great deal of information has been received from both parties, and both parties said they are prepared for the Board to make a decision. It is the chair's recommendation that we do not need to conduct additional preliminary investigation. All members concurred.*

**A motion was made by Widuch, seconded by Haley, to convene in CLOSED SESSION pursuant to Wis. Stat., sec. 19.85(1)(a) regarding deliberating a case which is the subject of a quasi-judicial body and pursuant to Wis. Stats., sec. 19.85(1)(g) to confer with legal counsel. The motion carried by the following vote:**

**Yes:** 3 - Campbell, Haley, Widuch

**Excused:** 1 - Klahn

**Following closed session discussion, a motion was made by Widuch, seconded by Haley, to reconvene in OPEN SESSION. The motion carried by voice vote.**

**Chair stated the Board considered the documents submitted by the parties and the comments made today. The Board also read the new documents submitted by Mr. Schwarz today and discussed them.**

**A motion was then made by Haley, seconded by Widuch, to find that there is NO PROBABLE CAUSE for further action. The motion carried unanimously by voice vote.**

## **Adjournment**

A motion was made by Widuch, seconded by Haley, to ADJOURN. The motion carried by voice vote.