

# **Peer Review of the Processes and Procedures of the New Orleans Ethics Review Board**

October 29, 2021

Review Committee:

Jane T. Feldman, Member, Denver Board of Ethics

Daniel M. Gluck, Executive Director and General Counsel, Hawai'i State Ethics Commission

Jabu M. Sengova, Ethics Officer, City of Atlanta Ethics Division, Office of the Inspector General

## **I. Introduction**

In the spring of 2021, the Review Committee agreed to review the processes and procedures of the New Orleans Ethics Review Board (“ERB”) and make recommendations if necessary. All Review Committee members have extensive experience administering and enforcing government ethics laws at the state and/or local level. All three Review Committee members are active members of the Council on Government Ethics Laws (“COGEL”) and have served on panels at annual conferences and/or in leadership positions at COGEL. Therefore, Review Committee members are knowledgeable and experienced in the field of government ethics and were able to review and comment on the ERB. Review Committee members agreed to conduct this review without pay.

## **II. Review Committee Process**

Pursuant to section 2-720, New Orleans Code of Ordinances, ERB “shall be subject to an independent, external peer review every three years. Such peer review shall be paid for by the ethics review board. When completed, the recommendations and findings of such peer review shall be submitted to the ethics review board and the clerk of the council.”

To conduct this peer review, the ERB Executive Director requested volunteers – via a COGEL message board – to conduct a peer review of ERB. The Review Committee members volunteered to conduct the peer review. None of the Review Committee members has worked for the State of Louisiana or the City of New Orleans.

This Review Committee was not familiar with the history of the ERB, or the statutory or Constitutional provisions that dictate the relations between the ERB and the State Ethics administration. Selection of Review Committee members was rather ad hoc, as Review Committee members were chosen simply by their willingness to perform the work in response to a request for assistance from Dane S. Ciolino, Executive Director of the ERB. The Review Committee had to spend some time coming up to speed on those matters and faced challenges obtaining responses from current and past ERB members. Therefore, although the Review Committee recognizes that there is a benefit to having independent government ethics professionals review the processes and procedures of ERB, there were obstacles to conducting the interviews as members live outside Louisiana, are unfamiliar with the community, and were unable to conduct interviews in person. Some of these issues may be related to the ongoing COVID-19 pandemic. The Review Committee recommends that ERB develop policies and procedures for selecting members of the next peer review, and that at minimum, a few of the members be familiar with the New Orleans community and the work of the ERB.

Review Committee members met by video conference with Executive Director Ciolino. The Review Committee reviewed materials on the ERB website, [www.nolaerb.gov](http://www.nolaerb.gov), including agendas, minutes, annual reports, and other informational materials. The Review Committee decided to interview all current and several past members of the ERB as well as others who interact with ERB, such as the Ethics Administrator of the Louisiana Ethics Administration

Program and representatives of good government groups. These interviews were conducted over telephone and/or videoconference over several weeks. However, Review Committee members were unable to interview all members of the ERB;<sup>1</sup> in total, the Review Committee was able to interview four members of the ERB, a law professor who does not serve on the ERB, ERB Executive Director Ciolino, and the Ethics Administrator of the Louisiana Board of Ethics, Kathleen Allen. The Review Committee did not speak with the Independent Police Monitor or the Inspector General, as the ERB is currently searching for and/or reviewing applicants for both positions. The Review Committee believes that it developed an adequate, if not comprehensive, picture of the ERB's operations.

### III. Analysis of ERB

#### a. ERB structure

The primary focus of ERB is the management and administration of the activities of Office of the Inspector General and the Office of the Independent Police Monitor. The ERB also coordinates and administers a training program for employees of the City of New Orleans, and the part-time Executive Director provides informal advice to city employees and elected officials, but he does not keep a record of the number or nature of the calls. The City Ethics program comprises in-person training conducted by a contractor and more recently by an employee retained by ERB. The State Ethics Program also provides mandatory online training for all City employees. (The State Ethics program has jurisdiction over all public employees in the State of Louisiana, including public school and charter school teachers, approximately

---

<sup>1</sup> Several ERB members failed to respond to repeated requests for interviews from the Review Committee, thus impeding the Review Committee's work.

250,000 individuals in all.) All complaints and requests for formal Advisory Opinion received by ERB are referred to the State Board. The State Board estimates that only a small percentage of complaints or advisory requests come from the City of New Orleans; a cursory review of agendas and minutes of the State Board over the past year confirmed this estimate.

Review Committee members were somewhat surprised by the organization and jurisdiction of the ERB. In our experience, city ethics commissions operate separately and independently of the respective state commissions. For example, the Denver Board of Ethics has jurisdiction over employees and officials of the City and County of Denver; the Denver Code of Ethics has different rules for acceptance of gifts, different gift limitations and different nepotism rules than is found in the State Constitution and underlying statutes which apply to state and some local employees and elected officials within the State of Colorado. The State of Hawai'i and the City and County of Honolulu have a similar statutory scheme, as do the City of Atlanta and State of Georgia.

b. ERB Budget

There appears to be consensus that the ERB should continue to receive a set percentage of City revenue for its budget, rather than having the budget decided by (and thus subject to the political whims of) any legislative body.

c. ERB: Effectiveness

i. Overall effectiveness

With one exception, everyone interviewed believed that the current system works well. Most interviewees thought that it was neither important nor necessary for the City of New Orleans to have a complaint or advisory opinion program separate or distinct from the State program. Moreover, most interviewees believed that a more independent system would require

state constitutional and statutory changes and that these changes would be neither politically viable nor financially reasonable. The Director of the State Ethics program also expressed that the consistency provided by a centralized system was beneficial. That said, one ERB member agreed that the current system is functional but expressed that having a more robust ethics advice program (if permitted by statute/ordinance) would be beneficial – though only if the ERB had the resources to conduct such a program. One ERB member described ERB members as engaged and having lively debates and believed that the ERB was effective at promoting transparency and the democratic process; another ERB member agreed that communication among ERB members had improved and that meetings were accessible to members of the public who wanted to engage with the ERB.

In contrast, one interviewee believes that the ERB should be more aggressive and proactive; that the lack of enforcement by the ERB is a problem; and that the number of complaints made about New Orleans officials would increase if ERB enhanced its profile as an agency that addressed alleged misconduct. That interviewee also recommended that there be an anonymous number attached to every investigation and that the ERB report the disposition of each complaint. This interviewee likewise recommended that ERB implement a schedule of fines and expressed disappointment that the City Council has neither created a schedule of fines nor empowered the ERB to levy continuing fines or require disgorgement of profits/gifts.

Several interviewees stated that ethics violations seemed more common elsewhere in Louisiana, particularly in rural areas, compared with the City of New Orleans. In the Review Committee members' experience, however, low numbers of ethics violations in cities tends to be the result of lack of resources for advice and enforcement, rather than an absence of actual violations. Thus, policymakers should consider whether the Louisiana Ethics Administration

Program needs additional resources to focus on the City of New Orleans, and if not, whether the ERB should receive additional resources for a robust advice and enforcement program.

ii. Oversight of the Office of the Inspector General and the Independent Police Monitor

Most interviewees believed that the oversight of the Office of the Inspector General (“OIG”) and of the Independent Police Monitor (“IPM”) was now being handled well, particularly now that the IPM and the IG report directly to the ERB (rather than having the IPM report to the IG). Current ERB members acknowledged that ERB was slow to realize that there were performance problems in those offices, however, they stated that ERB was now taking a more active role in supervising and monitoring those agencies. The ERB now requires more detailed reports, including monthly reporting from the IG and the IPM, and is better prepared to question the leaders of those agencies about their activities. All ERB members interviewed stated that, in their opinions, the operations of the OIG had reduced both the perception of corruption and actual corruption in the City.

There were some concerns about the hiring process for the IG and IPM, some of which were also discussed in detail in the December 21, 2020 report of the Bureau of Governmental Research. One interviewee expressed concern about the length of time needed to review candidates and fill the positions and suggested that changes to City ordinances may be necessary to speed up the process. Another interviewee stated that the hiring process should be more clearly defined and more open to the public, contending that the process should allow for public participation (so that the public can observe the vetting of the candidates). The Review Committee notes that there are certainly benefits in having increased transparency and public participation, but there are potential negative consequences of publicizing the names of applicants. First, some potential candidates may not apply for positions if their names will be

made public (even if they are not selected – or even named as a finalist – for the position); second, publicizing the names of applicants may create an opportunity for city or state officials to pressure ERB to hire – or not hire – certain individuals and/or to second-guess the hiring decision, possibly eroding trust in ERB, OIG, and/or IPM.

After the ERB has filled the positions of IG and IPM, the ERB should promptly evaluate the hiring process to see whether the quality of the candidate pool, the speed of the hiring process, and/or the public’s access to the hiring process can be improved.

iii. Training and Ethics Liaisons

Review Committee members were surprised that there was not more coordination and interaction between the State Board and ERB. Several ERB members were unaware of the role of the State Board, and representatives of the State Board did not know that ERB provides training to its employees and officials. The Review Committee recommends that the State Board and ERB should coordinate their work to assure consistency and accuracy. That said, it appears that the ERB’s Executive Director coordinates with the State Board on ethics advice: the Executive Director reports receiving requests for ethics advice approximately once a week, though he typically refers the caller to the State Board for binding guidance.

One interviewee suggested that the role of the Ethics liaisons should be expanded and that there should be more regular ethics trainings for those liaisons, though another ERB member believed that the ERB was making strides in its educational efforts.

d. Appointment Process for ERB members

Six members of the ERB are appointed by the mayor from lists of three nominees each submitted by the presidents or chancellors of Dillard University, Loyola University, Southern University in New Orleans (SUNO), Tulane University, University of New Orleans (UNO), and

Xavier University. The seventh member is appointed by the mayor. Each appointment is subject to approval by the City Council. Several interviewees stated that the nomination and appointment process is cumbersome, and that vacancies can persist for several months or even as long as a year. One interviewee concurred that the City needs a more rigorous board/commission appointment process to ensure that ERB members serve staggered terms as intended, rather than having all the members being appointed by the same mayor. ERB members can continue to serve pending appointment of a successor, but some ERB members have been unwilling or unable to stay on. No suggestions were made as to how to improve the process other than to set firmer deadlines for appointments.

#### IV. Recommendations

In conclusion, the Review Committee recommends as follows:

- 1. Improve the process for conducting peer reviews.** The Review Committee recommends that, for future reviews:
  - a. There should be an objective and clearly defined process for selecting members of the peer review committee;
  - b. At least some members of the peer review committee should be familiar with Louisiana and/or New Orleans governmental structure;
  - c. ERB members should be required to cooperate with the peer reviewers as a condition of continued service on the ERB; and
  - d. Funds should be available for peer reviewers to travel and conduct interviews/meetings in person.



- 2. Improve coordination between ERB and the State Board, particularly with respect to training.** The ERB and State Board should consider expanding the role of (and training provided to) ethics liaisons.
- 3. Consider whether there are sufficient resources for ethics advice and enforcement between/among the Louisiana Ethics Administration Program and the ERB.** If enforcement actions against City of New Orleans officials are rare, the cause may be insufficient resources for enforcement – not necessarily the absence of ethics violations by City employees.
- 4. Appoint ERB members in a timely manner.** ERB members should serve staggered terms, allowing both for continuity of operations and political stability – that is, to avoid having a single mayor appoint multiple ERB members at once.
- 5. Maintain independent funding for the ERB.** There appears to be consensus that having a set percentage of the City’s budget allocated for ERB every year, rather than having to request an appropriation, helps to maintain the ERB’s independence and stability.
- 6. Evaluate the hiring process for the IG and IPM.** Once the ERB has concluded its hiring for both the IG and IPM, the ERB should review its processes to determine whether any changes would improve the speed of the process, the quality of the applicant pool, and/or the public’s access to the process.

The Review Committee expresses its sincere thanks to the interviewees for their cooperation with this process; in particular, the Review Committee offers its thanks to ERB Executive Director Ciolino for his efforts in supporting the peer review process.