

## Chapter 78

### ETHICS

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**[HISTORY: Adopted by the Fulton County Board of Supervisors 12-27-1990 as L.L. No. 6-1990. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Policies and manuals — See Ch. 141.  
Rules of Order — See Ch. 155.

Public access to records — See Ch. 246, Art. I.

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#### § 78-1. Purpose; adoption of Code of Ethics.

- A. The purpose of this chapter is to create the Fulton County Ethics and Disclosure Law in compliance with Article 18 of the New York State General Municipal Law. The citizenry of Fulton County are entitled to the expectation of exemplary ethical behavior from their county officers, employees and appointed officials, and this chapter is intended to create the minimum standards which constitute that behavior. This chapter recognizes that varying degrees of professional and governmental responsibility warrant equitable requirements of disclosure in pursuit of official integrity, which must be balanced against individual constitutional rights. Any particulars not determined in this chapter shall be construed within the provisions of General Municipal Law, Article 18.
- B. The governing body of Fulton County does hereby adopt a Code of Ethics for the guidance of its officers and employees, setting forth herein the standards of conduct reasonably expected of them, and, pursuant to Subdivision 1 of § 811 of the General Municipal Law, Fulton County does hereby require that the officers and employees, as set forth in Attachment A hereto,<sup>1</sup> and all others who may from time to time be added via resolution of the Board of Supervisors, are required to file completed annual statements of financial disclosure containing the information as asked for in Form 200, entitled "Fulton County Disclosure Statement."<sup>2</sup> [Amended 2-8-1993 by L.L. No. 1-1993]

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<sup>1</sup> Editor's Note: Attachment A, as amended, is on file in the office of the Ethics Board.

<sup>2</sup> Editor's Note: Form 200 is on file in the office of the Ethics Board.

**§ 78-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**INTEREST** — A direct or indirect pecuniary or material benefit accruing to an official or employee as the result of a contract, business, professional transaction or other relationship with Fulton County. For the purpose of this chapter, an official or employee will be deemed to have an “interest” in the affairs of:

- A. His or her spouse or unemancipated children.
- B. A firm, partnership, corporation or association of which an official or employee is a member or employee.
- C. A corporation of which such official or employee is a member, director, employee or in which the official or employee owns five percent (5%) or more of any outstanding shares of any class of stock.

**OFFICIAL or EMPLOYEE** — An official or employee of Fulton County government, whether paid or unpaid, who is a member of one (1) or more of the boards, commissions, departments or agencies which serve Fulton County and all department and deputy department heads; except that the terms “official” or “employee” shall not mean a judge, justice, officer or employee of the unified court system. No person shall be deemed to be an “official” or “employee” solely by reason of being a volunteer fireman or civil defense volunteer, except a chief engineer or assistant chief engineer. As stated above, a listing of department heads and deputies, other managerial employees, statutory committee appointments, special appointments of the Board of Supervisors and its Chairman, ad hoc appointments and individual appointments by the Board of Supervisors or by the Chairman of the Board of Supervisors is attached hereto as Attachment A.<sup>3</sup> In connection with the listing set forth in Attachment A, the Board of Supervisors reserves the right, by resolution of such Board, to add new classes of “officials” or “employees” under this definition as deemed appropriate.

**SPOUSE** — The husband or wife of the employee or official unless living separate and apart from the employee or official with the intention of terminating the marriage or providing for permanent separation or unless separated pursuant to a judicial order, decree or judgment or a legally binding separation agreement.

**UNEMANCIPATED CHILD** — Any son, daughter, stepson or stepdaughter of a county officer, employee or appointed official if such child is under eighteen (18) or is a dependent of the officer, employee or appointed official as defined in the Internal Revenue Code § 152(a)(1) and (2) and any amendments thereto.

**VALUE or AMOUNT** — Whenever a “value” or “amount” is required to be reported, such “value” or “amount” shall be reported as being within one (1) of the following categories: Category A, under five thousand dollars (\$5,000.); Category B, five thousand dollars (\$5,000.) to under twenty thousand dollars (\$20,000.); Category C, twenty thousand dollars (\$20,000.) to under sixty thousand dollars (\$60,000.); Category D, sixty thousand dollars (\$60,000.) to under one hundred thousand dollars (\$100,000.); Category E, one

<sup>3</sup> Editor’s Note: Attachment A, as amended, is on file in the office of the Ethics Board.

hundred thousand dollars (\$100,000.) to under two hundred fifty thousand dollars (\$250,000.); and Category F, two hundred fifty thousand dollars (\$250,000.) or over. A reporting individual shall indicate the category by letter only. The Ethics Board shall maintain confidentiality of categories of amounts.

**§ 78-3. Prohibited activities; conflicts of interest.**

- A. It is the policy of the Board of Supervisors that all officials and employees must avoid conflicts or potential conflicts of interest. A conflict or a potential conflict exists whenever an official or employee has an interest, direct or indirect, which conflicts with their duty to their county or which could adversely affect an individual's judgment in the discharge of his or her responsibilities.
- B. No official or employee shall:
- (1) Take action or participate in any manner whatsoever in his or her official capacity in the discussion, negotiation or the awarding of any contract or in any business or professional dealings with Fulton County or any agency thereof in which the official or employee has or will have an interest, direct or indirect, in such contract or professional dealings.
  - (2) Engage in, solicit, negotiate for or promise to accept private employment or render services for his or her personal benefit when such employment or service creates a conflict or impairs the proper discharge of his or her official duties.
  - (3) Solicit, directly or indirectly, any gifts or receive or accept any gift having the value of seventy-five dollars (\$75.) or more, whether in form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her, or could reasonably be expected to influence him or her, in the performance of his or her official duties, or was intended as a reward for any official action on his or her part.
  - (4) Disclose confidential information acquired in the course of his or her official duties or use such information to further his or her personal interest.
  - (5) Accept employment or engage in any business or activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position or authority.
  - (6) Take action on a matter before the county or any instrumentality thereof when, to his or her knowledge, the performance of that action would provide a pecuniary or material benefit to himself or herself.

**§ 78-4. Disclosure of interest.**

- A. Any official who has, will have or intends to acquire a direct or indirect interest in any matter being considered by Fulton County or by any other official, board, agency, officer or employee of Fulton County, and who participates in the discussion before or who gives

an opinion or gives advice to any board, agency or individual considering the same, shall publicly disclose on the official record the nature and the extent of such interest.

- B. Any official or employee of Fulton County who has knowledge of any matter being considered by any board, agency, officer or employee of Fulton County, in which matter he or she has or will have or intends to acquire any direct or indirect interest, shall be required immediately to disclose, in writing, his or her interest to such board, agency, officer or employee, and the nature and the extent thereof.

**§ 78-5. Annual Code of Ethics review. [Amended 2-8-1993 by L.L. No. 1-1993]**

- A. Every official and employee is required to attest on an annual basis that he or she has reviewed the Code of Ethics of Fulton County, and such attestation shall be made on or before May 15 of each year.
- B. The penalties for failing to comply with this subsection will be the same as those provided for in § 78-9. The Attestation Form (Form 100) shall provide as follows.<sup>4</sup>

**§ 78-6. Statement of disclosure.**

- A. All officials and employees of Fulton County shall file a statement of disclosure (Form 200) containing the information as required by the statement of disclosure.<sup>5</sup> The statement shall be filed with the Ethics Board no later than the 15th day of May each year and shall cover the preceding calendar year. A person who is subject to the filing requirements of this chapter from more than one (1) county may satisfy the requirements by filing only one (1) annual statement of financial disclosure and filing with the other(s) a notice that such filing has been made, inclusive of the date and place of the filing. Newly appointed or elected officials or employees whose duties commence after the first of January will be required to submit a statement of disclosure within thirty (30) days after the commencement of their duties. Such disclosure will cover the twelve-month period prior to the date of filing. Within thirty (30) days of any material change in the information contained in his or her most recently filed statement of disclosure, the official or employee shall file a signed amendment to the statement of disclosure reflecting such change. It shall be the duty of the Ethics Board to verify that each official or employee subject to this chapter has filed his or her statement. [Amended 2-8-1993 by L.L. No. 1-1993]
- B. Statements of disclosure shall be maintained for a minimum period of five (5) years from the date of filing.
- C. The form of the statement of disclosure shall be as follows.<sup>6</sup>

<sup>4</sup> Editor's Note: The Attestation Form (Form 100) is on file in the office of the Ethics Board. Blank forms can be obtained from the Director of Personnel.

<sup>5</sup> Editor's Note: The Statement of Disclosure Form (Form 200), as amended, is on file in the office of the Ethics Board. Blank forms can be obtained from the Director of Personnel.

<sup>6</sup> Editor's Note: The Statement of Disclosure Form (Form 200), as amended, is on file in the office of the Ethics Board. Blank forms can be obtained from the Director of Personnel.

**§ 78-7. Public access to information.**

The Ethics Board of Fulton County shall promulgate rules and regulations which detail public availability of the information contained on the Fulton County statement of disclosure. Such rules and regulations shall be consistent with § 813, Subdivision 18, of the General Municipal Law.

**§ 78-8. Ethics Board.**

- A. The Ethics Board of Fulton County shall consist of five (5) appointed members, a majority of whom shall not be officers or employees of the county, and at least one (1) of whom shall be an elected or appointed officer of Fulton County. Each appointee must be a resident of Fulton County. Each member of the Ethics Board of Fulton County shall be appointed by a majority vote of the Board of Supervisors.
- B. The Chairman of said Ethics Board shall be selected and appointed by the Chairman of the Board of Supervisors for a term of one (1) year.
- C. Fulton County's Ethics Board members shall serve a term of four (4) years; however, two (2) of the original appointees shall be appointed to serve an initial term of two (2) years.
- D. Any vacancy occurring on Fulton County's Ethics Board shall be filled within sixty (60) days of its occurrence, in the same manner as the member whose vacancy is being filled was appointed. A person appointed to fill a vacancy shall be appointed for the Ethics Board shall constitute a quorum with a vote of at least three (3) members being required for action by the Ethics Board.
- E. Four (4) members of the Ethics Board shall constitute a quorum with a vote of at least three (3) members being required for action by the Ethics Board.
- F. The members of the Ethics Board shall not be compensated; however, they may be reimbursed for reasonable expenses incurred in the performance of their duties. Members of the Ethics Board may be removed by the Chairman of the Board of Supervisors for substantial neglect of duty, gross misconduct in office, inability to discharge the power and duties of office or violation of this chapter after written notice and opportunity to reply.
- G. Responsibilities.
  - (1) The Ethics Board will meet, at least quarterly on or about the first Mondays of January, April, July and October. At its meetings, the Ethics Board shall receive and consider complaints of unethical practices or instances of alleged impropriety brought by any citizen.
  - (2) When the Ethics Board determines that a conflict of interest or that other impropriety exists, the Ethics Board will cause and direct that relevant information pertaining to the conflict or impropriety of a particular official or employee be filed with Fulton County's Board of Supervisors. The Board of Supervisors shall accept such statements and shall maintain separate files for them.
  - (3) Prior to any disclosure to Fulton County's Board of Supervisors, the Ethics Board shall set forth its findings of fact and its conclusions and the reasons which justify its

decision to release such information. Prior to the filing with the Board of Supervisors of such findings of fact and conclusion, a copy of such shall be mailed to the official or the employee by certified mail, return receipt requested. The official or employee may respond, rebut or otherwise refute the findings of the Ethics Board, either in writing or personally, or both, at a time and place specified by the Ethics Board. The failure of the official or employee to respond within twenty-one (21) days from the date of the Ethics Board letter shall constitute a waiver by the official or employee. The Ethics Board may, in its discretion, amend, revise or rewrite its findings or it may rescind its initial decision by a majority vote of its total membership.

- (4) In addition to all the other powers conferred upon the Ethics Board, the Ethics Board may recommend to the official or employee a manner in which the conflict of interest or appearance of impropriety may be resolved. An affidavit by the official or employee, detailing his or her compliance with the recommendations, may be sufficient reason to rescind the Ethics Board's decision to disclose the statement of disclosure or portion of such statement to Fulton County's Board of Supervisors. The affidavit must be delivered to the Ethics Board at a time and place which shall be set forth in the Ethics Board certified return receipt requested letter to such official or employee. If the official or employee fails to follow the recommendations of the Ethics Board in curing the conflict of interest or appearance of impropriety, such fact shall also be disclosed to Fulton County's Board of Supervisors.
- (5) Pending the response of the official or the employee and of the final resolution pursuant to either Subsection G(3) or (4) above, the Ethics Board shall not disclose any information to Fulton County's Board of Supervisors or to the public.

#### H. Powers.

- (1) The Fulton County Ethics Board shall have the power and duty to:
  - (a) Administer and enforce all provisions of this chapter.
  - (b) Conduct any investigations to carry out its responsibilities; pursuant to this power and duty, the Ethics Board may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records which it may deem relevant or material.
  - (c) Determine procedures for granting deletions and exemptions.
  - (d) Establish grounds for exemptions from timely filing because of justifiable cause or undue hardship and procedures for extensions for filing, including a time limitation upon such extensions.
- (2) In addition to any other powers and duties specified by this chapter, the Fulton County Ethics Board shall have the authority to promulgate rules and regulations of the same import as those which the Temporary State Commission on Local Government Ethics issued under Article 18, § 813, of the New York State General Municipal Law.

**§ 78-9. Penalties for offenses; civil penalties; procedures.**

- A. If any official or employee refuses or fails, either knowingly or intentionally, to file a statement of disclosure, as required by this chapter, the Ethics Board shall notify Fulton County's Board of Supervisors that said individual has not filed such statement. On such notification, Fulton County may suspend the official or employee without pay, if such person is compensated, until such time as compliance is rendered. In addition, the official or employee shall be notified by certified mail that such required statement is not on file. Once a statement has been filed, the Ethics Board shall promptly notify Fulton County's Board of Supervisors that the official or the employee has complied with such requirement of this chapter. The official or employee shall be reinstated, and any moneys withheld pursuant to this section shall be released. Notwithstanding any other penalties imposed by this section, if any official or employee does not file a statement within forty-five (45) days after having been notified by the Ethics Board that said official or employee has failed to file, or if the official or employee files a statement which the Ethics Board determines was filed with intent to deceive, intentionally misrepresent or otherwise fraudulently has answered any questions set forth in the statement or has intentionally withheld any information asked for or demanded in the statement such action shall be deemed a misconduct of office and shall be grounds for suspension or dismissal by the appropriate authority. The Ethics Board shall send a notice of reasonable cause to Fulton County's Board of Supervisors of such instances of alleged misconduct. Fulton County's Board of Supervisors may then take whatever action it deems appropriate to enforce the suspension or dismissal of the offending individual.
- B. If an official or employee files a statement with intent to deceive or intentionally misrepresents or otherwise fraudulently answers any questions set forth in the statement or intentionally withholds any information requested or demanded in the statement, and if such deception or misrepresentation is found to be both intentional and material, then such official or employee may be assessed a civil penalty of not more than ten thousand dollars (\$10,000.) by the Ethics Board. An assessment of a civil penalty will be final unless suspended or vacated within thirty (30) days of imposition by the Ethics Board.
- C. The Fulton County Board of Ethics shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of the civil penalties herein authorized. Such rules shall provide for due process procedural mechanisms substantially similar to those set forth in Article 3 of the State Administrative Procedure Act<sup>7</sup>, but such mechanisms need not be identical in terms or scope.
- D. It will be a violation of this chapter for any individual, except the individual who files such statement, to disclose any information contained on a financial statement of disclosure except as authorized by this chapter. A civil action may be brought by the Ethics Board against any person or organization that violates this subsection.
- E. Nothing in this section shall be construed as precluding the prosecution of officials or employees for violations of any offense, criminal or civil, pursuant to the laws or statutes of the State of New York.

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<sup>7</sup> Editor's Note: See § 300 et seq.

**§ 78-10. Distribution of copies.<sup>8</sup>**

The chief executive officer shall designate the Personnel Director to cause a copy of the Code of Ethics to be distributed to every officer and employee of the county. Failure to distribute any such copy shall have no effect on the duty of compliance with such code, nor the enforcement thereof.

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<sup>8</sup> Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.