



Agenda

December 11, 2014 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County
Commission on Ethics
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West Palm Beach, FL 33401
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Commissioners
Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Michael F. Loffredo
Carmine A. Priore
Clevis Headley

Executive Director
Steven P. Cullen

Intake Manager
Gina A. Levesque

Staff Counsel
Christie E. Kelley

Senior Investigator
Mark E. Bannon

Investigator
Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from October 24, 2014 (Workshop)
- V. By-Laws – Update and Approval
- VI. Rules of Procedure – Update and Approval
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 14-035
 - b. RQO 14-036
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Proposed Advisory Opinions
 - a. RQO 14-037
 - b. RQO 14-038
- X. Continued discussion of amendment to Ordinance
- XI. Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
WORKSHOP
PALM BEACH COUNTY, FLORIDA**

OCTOBER 24, 2014

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Clevis Headley
Michael F. Loffredo
Carmine A. Priore

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, COE Executive Director
Christie E. Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Salesia Smith-Gordon stated that the meeting's purpose was to review COE rules, ordinances, and bylaws, and to discuss in a nonvoting forum any recommended amendments or changes.

IV. INTRODUCTION OF FACILITATOR AND SPECIAL GUESTS

Chair Smith-Gordon welcomed the attendees, as well as COE Executive Director Steven P. Cullen; past president of Leadership Palm Beach County and meeting facilitator David Baker; and Assistant County Attorney Leonard Berger. She recognized Mr. Berger as the chief author of the COE rules, ordinances and bylaws.

V. HISTORICAL OVERVIEW OF COE

Mr. Baker, past COE/Office of Inspector General Implementation Committee Chair, stated that Mr. Berger spent approximately one year drafting the Code of Ethics (Code) ordinance's organizational charter for both the COE and the Office of Inspector General (OIG).

Mr. Baker said that:

- The Code's ordinance was adopted by the Board of County Commissioners (BCC) prior to the citizens' adoption vote.
- Adoption led to a proposed amendment that made the OIG and the COE part of the County charter. It was approved by 72 percent of voters in the county and in every municipality.
- The COE's major components were hearings related to Code violations, public education, staff training, and advisories.
- Today's discussion focused on the COE's origins four years ago and evaluation of its current effectiveness.
- Members were invited to offer ideas and recommendations for any revisions to the goals and procedures, and to the ordinance itself.

V. – CONTINUED

Commissioner Clevis Headley said that the COE appeared to be functioning exactly as intended, according to the components enumerated by Mr. Baker.

Commissioner Carmine Priore said that no changes were needed as long as the COE implemented the Code and made decisions based on its provisions.

Commissioner Michael Loffredo said that the COE appeared to be on target.

Vice Chair Michael Kridel said that he sensed an education disconnect between the COE's purpose and the public's perception of its purpose. The COE's performance was consistent with its mission, he added.

Chair Smith-Gordon said that:

- She agreed that the COE performed its quasi-judicial task, and that community education was key to the public's perception of the COE.
- Although each COE seat was appointed, each commissioner was obligated to report the COE's activities back to individuals and groups.

Commissioner Priore said that as a League of Cities (LOC) member, he was aware that other LOC members understood the Code's language and the COE's purpose.

Commissioner Loffredo said that he would recap COE activities at the Palm Beach County Police Chiefs' Association (Association) monthly meetings.

Mr. Baker commented that part of the COE's education mission was to ensure that community groups had the latest information about COE activities. He said that Mr. Cullen would help him assemble a presentation.

Commissioner Headley stated that he intended to ask political science and philosophy clubs to sponsor meetings and lectures as a means to integrate ethics into the university's consciousness.

VI. ROLES OF COMMISSIONERS

VI.A. Relating to COE

Mr. Baker said that it was critical for commissioners to understand the COE's jurisdiction and responsibilities before entering public discussions about Code compliance and the COE charter.

Chair Smith-Gordon said that commissioners' roles were assigned primarily to the COE and secondarily to the OIG committee. She said that the community should understand that a third tier of commissioners' responsibility was to the State Attorney's Office. Slide presentations about the COE were available for viewing, she added.

Vice Chair Kridel said that his role was to be appointed by the Florida Institute of Certified Professional Accountants (FICPA) and report to three individual FICPA county chapters. As an ethics teacher for accountants, he could integrate some of the COE's actions into a structured ethics class, he said.

Commissioner Loffredo commented that among the 38 municipalities in the Association, several did not want to participate in COE activities.

Mr. Baker said that:

- Individuals who were normally not interested in the COE's or the OIG's activities could become very interested if found in violation of the Code.
- Education remained an essential COE component with its emphasis on staff training, advisory opinions, and outreach to County vendors and contractors.
- Citizens should know that the County achieved control of the rules that governed public officials' behaviors. Its well-organized, transparent system was recognized for the entire ethics initiative.
- Commissioners had opportunities to educate those who appointed them as well as the general public.

VI.A. – CONTINUED

- Baseless complaints allowed an official to clear his or her name publicly. The COE offered a method for explaining that no probable cause existed.

Chair Smith-Gordon said that it was important for commissioners, particularly newer members, to understand the review process from complaint to conclusion.

Mr. Cullen stated that:

- The rule-driven complaint process was outlined in the book he wrote on all the rules and ordinances controlling the COE.
 - A sworn, confidential written complaint alleged facts sufficient to constitute an offense under the ordinance. Although staff was unable to make it public, the complainant could do so.
 - A legal sufficiency determination initiated a detailed investigation to which staff counsel or a volunteer prosecutor was assigned.
- Complaints came to the COE in closed executive sessions. The COE decided whether trustworthy facts and circumstances demonstrated violations.
 - A “No” vote ended the matter, and a “Yes” vote entitled the respondent to a public trial before the COE.
- The public could view the case file on the COE’s Web site with audio and video of the proceedings.
- A meaningful discussion could be held regarding procedures for political complaints, which were handled differently among several Florida counties.
 - Staff was sensitive to time deadlines surrounding election campaigns and the filing of complaints.
 - This COE could review and modify the procedures established by other groups for greater effectiveness.

VI.A. – CONTINUED

Vice Chair Kridel commented that no agency could prevent media manipulation.

Mr. Berger said that:

- Politically motivated uses of the COE occurred off and on the election cycle.
- Miami-Dade County followed an expedited process for complaints filed during elections so that the entire COE was not required to convene.

Chair Smith-Gordon recommended the creation of specific procedures for complaints submitted during political campaigns.

Commissioner Priore said that the COE could take this up as another process, and possibly hold another workshop, to create the language enabling the disposition of such complaints.

Mr. Baker said that discussion should continue in a formal setting with possible public input and that Mr. Cullen would add further discussion or a workshop as an agenda item.

VI.B. Relating to Appointing Entities

Mr. Cullen stated that:

- Staff training was exclusively a staff function. He conducted ethics training on a comprehensive Web site directed toward local elected officials, municipal and County employees, and advisory board members.
- The lobbyist registration ordinance currently did not require lobbyist training. County staff handled the registrations and answered questions.

VI.B. – CONTINUED

- Mandatory lobbyist, contractor, and vendor training could be discussed by the COE.

Mr. Berger said that:

- The County was served by approximately 12,000 vendors and thousands more served the municipalities. There was no budget for training them.
- Elaborate purchasing schemes in the cities made it difficult to gauge who actually conducted business with government offices.

Mr. Baker commented that theoretically, every employee of the Florida Power and Light Company (FPL), one of the county's largest employers, was governed by the Code in its interactions with County and municipal officials. He said that FPL employees could become more conscious of the Code in various ways.

Palm Beach County League of Cities Executive Director Richard Radcliffe stated that in every city, informational door signs stated that vendors and lobbyists must sign in and identify themselves.

Chair Smith-Gordon asked Commissioner Priore to collaborate with Mr. Radcliffe to identify ways of educating vendors about the COE and the Code and bring them back for group discussion.

Mr. Baker said that the issuance of advisory opinions remained an active function of the COE.

Mr. Cullen said that:

- Requests for advisory opinions must be submitted in writing by someone under the Code's jurisdiction. Approximately 35 requests were handled in 2014.

VI.B. – CONTINUED

- Staff's opinion letter was routinely presented to the COE as an agenda item. A press release announcing the opinion was released following discussion and approval. All opinions were published on the Web site.

RECESS:

At 11:15 a.m., the chair declared a recess.

RECONVENE:

At 11:30, the meeting reconvened with Commissioners Headley, Kridel, Loffredo, Priore, and Smith-Gordon present.

VII. DISCUSSION POINTS

VII.A. The Office of Program Policy Analysis and Government Accountability (OPPAGA) Report and Changes Implemented

Chair Smith-Gordon informed the group that State Senator Joseph Abruzzo (Sen. Abruzzo) was available by telephone during the discussion, and that his representative was in the audience.

Mr. Cullen stated that:

- The agenda packet contained the OPPAGA 2013 audit report, a letter written in response to it, and a chart of the changes implemented.
- Findings included the following:
 - staff overlap in some functions,
 - questions on the COE's practice to hear a case on both probable cause and final hearing,
 - commissioner appointment and disqualification processes,
 - mandatory ethics training for vendors,

VII.A. – CONTINUED

- commissioner training and performance metrics.
- The remaining issue to be discussed was whether the COE should hear cases in both probable cause and final hearings or whether an ordinance change would permit trials by hearing officers. All other suggestions were cured or clarified by administrative and rule changes.

Mr. Cullen said that:

- After an ethics complaint was filed, the COE heard it to determine whether probable cause existed. Although several probable causes were found to date, no formal trial resulted since the COE's inception.
- The current law was that a respondent had the right to a trial before the full COE. Under the rules, the chair may designate a panel of three commissioners only to hear a case.

Chair Smith-Gordon requested discussion as to whether a respondent should have an opportunity to select another hearing officer other than a commissioner who heard the probable cause issue and later ruled on it as a trial function. Concerns to be resolved were the criteria set for any particular individual to hear allegations, and whether the individual should be a paid volunteer or not.

Mr. Berger said that:

- The County maintained a pool of hearing officers experienced in applying facts to administrative law and procedure. He said that they were familiar with matters ranging from fire code issues and nuisance abatement to groundwater resources.

VII.A. – CONTINUED

- The County paid the officers an hourly rate and impartiality was assured.
- The ordinance could be amended to employ County hearing officers, who were regularly rotated and were immediately available.

Commissioner Priore said that the COE should first establish probable cause, and if the respondent did not agree, he or she would choose a hearing before a hearing officer.

Commissioner Headley commented that the respondent may prefer the option of a COE hearing instead of a hearing officer.

Mr. Cullen said that for those who were critical of the existing system, the goal was for the COE to provide options to respondents.

Chair Smith-Gordon pointed out that individuals retained options in a civil court setting, and that hearing officers should be considered, as well as an ordinance language change. She said that she favored the options currently in place because procedural rules included all the variables from the hearing to the discovery process to the final disposition.

Legislative Affairs Director Todd Bonlarron said that a system that allowed individuals to choose a procedure met the spirit of the OPPAGA's observations.

Mr. Cullen said that the agenda materials contained a draft of suggested language concerning public hearing procedures and the choice of a hearing officer. The COE would decide whether to recommend an ordinance change to the BCC, he added.

Mr. Berger said that:

- Hearing officers underwent ethics training just as other County officials and employees did, so they understood the Code.

VII.A. – CONTINUED

- At the next regular meeting, he would provide Code sections listing the hearing officers' required qualifications.

(CLERK'S NOTE: Chair Smith-Gordon requested public comments at this time.)

VII.A.1. Public Comment

DISCUSSED: Hearing Officers.

Norman Ostrau, City of West Palm Beach Ethics Officer, asked whether a hearing officer's order would be a recommended order.

Mr. Berger said that:

- It would be a final order that could be appealed and would not come back to the COE.
- Hearing officers would follow the same civil rules of procedure for appeals.
- A language draft would be brought to the next meeting as an agenda item.
- A drafting committee could refine the language ting before presentation to the BCC. A preliminary reading and a public hearing would require two BCC meetings prior to adoption in March 2015.

Chair Smith-Gordon said that Sen. Abruzzo requested that the COE take a statewide lead in ethics reform by collaborating with other ethics commissions to provide minimum standards for ongoing legislative efforts.

VII.A.2.

DISCUSSED: Ethics Complaint Process.

Shreya Kuntawala, Sen. Abruzzo's assistant, said that Sen. Abruzzo supported the COE's cooperative work with other municipalities statewide. She said that he extended his appreciation for the COE's review of expedited complaint processes and options for respondents.

VII.B. **Senator Abruzzo's "Ethics Summit"**

VII.B.1.

Mr. Cullen reported that he attended a planning session for an "Ethics Summit" suggested by Sen. Abruzzo. He said that the date selected for a statewide meeting on the benefits of local ethics commissions would be announced later.

Ms. Kuntawala said that she recalled that the "Ethics Summit" planning session members agreed to delay setting a date for a statewide summit until minimum-standards language was agreed upon for the upcoming legislative session. She recommended creating interim "skeleton language" until various issues were resolved.

(CLERK'S NOTE: Chair Smith-Gordon requested additional public comments at this time.)

VII.B.2. **Public Comment**

DISCUSSED: Ethics Summit.

Nancy Hogan said that any delay in scheduling a statewide ethics summit provided additional time for minimum standards language to be discussed and for the public to attend those discussions.

VII.C. Establishment of COE Standards Book

Mr. Cullen stated that:

- In a planning meeting with Sen. Abruzzo, the need was identified for universal principles or standards that local ethics commissions could reference.
 - Agencies within law enforcement, the OIG, and other offices routinely referenced accreditation boards' minimum standards.
 - The agenda materials contained the draft of "Principles and Standards for Local Ethics Commissions." It was drawn from the COE's existing standards and from national materials available for public consumption.
- Sen. Abruzzo intended to present a condensed version of the COE's draft document, or another similar document, for incorporation into legislation and distribution to local ethics commissions.
- The COE met all standards with the exception of the separate trial function. Its public hearing process was the only area targeted for revision.

Chair Smith-Gordon clarified that the "Principles and Standards for Local Ethics Commissions" was maintained as a County guide and accessed by other jurisdictions around the State for their own applications.

VIII. REVIEW OF PROPOSED CHANGES TO COE RULES AND BYLAWS

Mr. Baker said that proposed changes to the COE rules and bylaws were contained in the agenda materials.

Mr. Cullen commented that the rules covered many pages and that if the ordinance were changed, further changes would be needed.

VIII. – CONTINUED

Chair Smith-Gordon recommended that a very general discussion be held now and additional discussion be deferred until later.

Mr. Cullen stated that:

- The current bylaws provided that BCC meetings were conducted according to “Robert’s Rules of Order” (Robert’s Rules).
- Previous COE meetings entertained discussions on the applicability of Robert’s Rules in a particular situation because they were difficult to follow.
 - It was suggested that a more comprehensive set of rules for governing the meetings could be incorporated into either the bylaws or the rules of procedure.
 - The document incorporated by staff was a set of rules that the BCC used in meetings. They were based on Robert’s Rules and removed any doubt as to which rules applied.
 - The proposed revisions could be condensed and details about language insertions would be discussed.

Commissioner Priore said that general rules were beneficial for common understanding. He said that the BCC’s procedural rules were efficient and effective, and could be applied to municipalities as well.

Commissioner Kridel commented that rules changes concerning notification of intake procedures needed further discussion.

Mr. Cullen remarked that any confusion would be cleared up when the matter came back for discussion.

IX. REVIEW OF PROPOSED CHANGES TO COE ORDINANCES – None

Mr. Baker stated that another public comment would be taken.

(CLERK'S NOTE: Item XII. was taken up at this time.)

XII. Public Comments

XII.1.

DISCUSSED: Public Education.

Mr. Radcliffe said that public education about the COE's activities was positive as demonstrated by reduced numbers of ethics complaints.

XII.2.

DISCUSSED: Political Manipulation.

Mr. Radcliffe commented that the Code contained provisions for anyone who used the COE for political purposes. He said that a person could be charged, as evidenced by the advisory opinion issued concerning the Keith James matter, which could be referenced in any future Code changes.

(CLERK'S NOTE: The agenda order was restored.)

X. EXECUTIVE DIRECTOR COMMENTS – None

XI. COMMISSION COMMENTS – None

XIII. ADJOURNMENT

At 12:38 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair

V – BY-LAWS UPDATE

Staff submits proposed changes to the Commission on Ethics by-laws as follows:

Staff Recommendation:

1. Table of Contents added at beginning of document
2. Article I, Section 2: Offices

The 1916 Historic Palm Beach County Courthouse
300 N. Dixie Highway, Suite 450
West Palm Beach, FL 33401
Or such address where the Commission may be located from time to time.
3. Article III, Section 10: Public Comment
A note regarding the historical change has been added to the document so that a timeline of all changes made are kept within the document itself.

PALM BEACH COUNTY COMMISSION ON ETHICS BY-LAWS

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DRAFT

ARTICLE I –IDENTIFICATION

Section 1: Name

The Palm Beach County Commission on Ethics

Section 2: Offices

2633 Vista Parkway

West Palm Beach, FL 33411

Or such address where the Commission may be located from time to time

ARTICLE II-MISSION STATEMENT

Section 1: Mission

The mission of the Commission on Ethics is to ensure the integrity of the governmental decision-making process, restore public confidence in government and to serve as the guardian of the public trust.

Section 2: Strategy

In order to accomplish the mission the Palm Beach County Commission on Ethics shall:

1. Educate the public, elected and appointed officials and public employees, lobbyists, and vendors doing business with the county of exiting standards of ethical conduct.
2. Actively enforce the standards of conduct that apply to elected and appointed officials and public servants, lobbyists and former public employees.
3. Review ordinances under the Commission's jurisdiction and applicable state and federal statutes related to ethics in government to recommend changes that will lead to greater ethics compliance.
4. Serve as a model for elected and appointed officials and government employees and work to create an atmosphere conducive to ethical conduct and behavior for both the public and private sectors within Palm Beach County.

ARTICLE III- COMMISSION ON ETHICS

Section 1: Number, Appointing Authority and Qualifications

The Commission on Ethics shall consist of five (5) members. The President of the Palm Beach County Association of Chiefs of Police shall appoint a former law enforcement official with experience in investigating white collar crime or public corruption. The President of the Hispanic Bar Association of Palm Beach County, the President of the F. Malcolm Cunningham, Sr. Bar Association, and the President of the Palm Beach County Bar Association shall appoint an attorney with experience in ethics regulation of public officials and employees. The President of Florida Atlantic University (FAU) shall appoint a faculty member who teaches at an institution of higher education with a campus located in Palm Beach County and who has taught a course in professional legal ethics or has published or performed services in the field of

professional legal ethics. The President of the Palm Beach Chapter of the Florida Institute of CPAs shall appoint a member who possesses at least five (5) years experience as a Certified Public Accountant (CPA) with forensic audit experience. The Board of Directors of the Palm Beach County League of Cities, Inc. shall appoint a person who has served as a former elected official for a governmental entity in Palm Beach County.

Section 2: Term of Appointment

The members of the Ethics Commission shall serve staggered terms of four (4) years each, provided that of the original members, the two (2) members appointed by the Palm Beach County Association of Chiefs of Police and The Presidents of the Hispanic, F. Malcolm Cunningham, Jr. and Palm Beach County Bar Associations shall be appointed to a term of two years and the remaining three (3) members shall be appointed for a initial term of four (4) years. Thereafter, all members shall serve terms of four (4) years.

Section 3: Conditions of Appointment

In addition to the requirement that each member take the prescribed oath of office pursuant to section 876.05, Florida Statutes, during their tenure members of the Commission may not hold or campaign for any elective political office, hold office in any political party or political committee, actively participate in or contribute to any political action committee or to any campaign for state or local office or for any U.S. Congressional or Senate office serving the State of Florida, be employed by Palm Beach County, any municipality within Palm Beach County or any other governmental entity subject to the authority of the Commission on Ethics or the Inspector General, or allow his or her name to be used by a campaign in support of or against any candidate for political office or any referendum or other ballot question.

Section 4: Vacancy and Removals

A vacancy occurring during or at the expiration of a member's terms on the Commission on Ethics shall be filled as provided in the Commission on Ethics ordinance, Article V. Section 2-255 no later than sixty (60) days after the vacancy occurs. A newly appointed member shall serve out the remainder of his or her predecessor's term.

Section 5: Compensation

Ethics Commissioners shall serve without compensation but shall be entitled to reimbursement for necessary expenses incurred in the discharge of their duties.

Section 6: Function

The Ethics Commission shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Palm Beach County Code of Ethics, Lobbyist Registration and Post-Employment Ordinances or similar ordinances, rules or regulations duly adopted by Palm Beach County.

Section 7: Duties and Responsibilities

The Ethics Commission shall:

1. Issue advisory opinions regarding county ordinances within the jurisdiction of the Commission as requested by elected and appointed officials and other public servants.
2. Make legal sufficiency and probable cause determinations, approve settlement agreements and issue public reports and final orders regarding disposition of complaints and impose penalties.
3. Develop educational programs and materials and engage in community outreach to inform and educate county and municipal officials and employees, county vendors, non-profit corporations and other entities that do business with the county as well as the public at large about county ethics ordinances and the importance of ethics to the public's confidence in county and municipal government.
4. Review ordinances and state and federal laws relating to ethics in government and report and make recommendations to the Board of County Commissioners as it deems appropriate.

Section 8: Grants, Contributions or Appropriations

The Commission on Ethics, through the Executive Director, may actively pursue and accept grants, contributions or appropriations from the federal government, state government, any municipality within Palm Beach County, or any academic institution or nonprofit entity which has not entered into a contract or transacted business with the County, or if having entered into such contract or business transaction with the County, by a Board of County Commission resolution of approval of such grant, contribution or appropriation by the academic institution or nonprofit entity.

Section 9: Procedures Upon Removal

Upon notification to the appointing body, The Commission on Ethics may remove a Commissioner for good cause upon a supermajority vote of the remaining Commissioners. Good cause includes, but is not limited to the following:

1. A conviction of a crime of moral turpitude or a felony crime.
2. A finding of a violation of the Palm Beach County Code of Ethics.
3. A failure to meet conditions of appointment as contained in Article III, Section 3 of the Commission on Ethics By-Laws.

ARTICLE IV- OFFICES

Section 1: Officers

The officers of the Commission on Ethics are a Chairperson and a Vice Chairperson.

Section 2: Term of Office

The term of each office is two years. No officer shall be permitted to serve two (2) consecutive terms in their respective offices.

Section 3: Chairperson

The Chairperson shall preside at all meetings of the Commission.

Section 4: Vice Chairperson

In the absence or disability of the Chairperson, the Vice Chairperson shall perform the duties of Chairperson.

ARTICLE V-COMMISSION STAFF

Section 1: Executive Director

The Executive Director is appointed by and serves at the pleasure of the Ethics Commission. The Executive Director is the chief executive of the department and shall be a member of the Florida Bar.

Section 2: Counsel to the Commission on Ethics

The Counsel to the Commission on Ethics is appointed by and serves at the pleasure of the Ethics Commission. Counsel shall be a member of the Florida Bar and may serve on a volunteer basis.

Section 3: Advocate

The Advocate is appointed by and serves at the pleasure of the Ethics Commission. The advocate shall prosecute cases before the Ethics Commission. The Executive Director may serve as Advocate. The Advocate may serve on a volunteer basis.

Section 4: Other Employees

The Executive Director shall have the authority to appoint, remove and suspend employees or agents of the Commission on Ethics within the constraints set forth by the Commission's budget. The Executive Director shall be further empowered to adopt personnel and management policies consistent with like policies in place for County personnel.

ARTICLE VI-COMMITTEES

Section 1: Committee Chairs

The Ethics Commission may appoint committee chairs to perform specific tasks or functions

Section 2: Personnel Committee

The Commission on Ethics shall establish a personnel committee to review personnel policies, hear formal employee grievances and complaints and perform other personnel related functions as determined by the Commission.

Section 3: Education and Public Outreach

The Ethics Commission shall establish an education and public outreach committee to assist the Executive Director and the staff in developing policies related to the Commission's education and public outreach functions.

Section 4: Other Ad Hoc Committees

The Chairperson and/or the Commission on Ethics may establish other committees to perform certain tasks as deemed necessary.

ARTICLE VIII-MEETINGS

Section 1: Agenda

The Executive Director, in collaboration with the Chairperson, or Vice Chairperson shall establish the agenda for regular and special meetings. All action items for a Commission on Ethics agenda, including requests for opinions and motions regarding complaints, must be received at least five (5) days prior to the meeting to be placed on the agenda.

Section 2: Quorum

At all meetings of the full Commission, the presence of a majority of three members shall constitute a quorum for all purposes. The act of the majority of the members of the Commission shall be the act of the full membership.

Section 3: Attendance by Electronic Means

A member may attend a meeting by electronic means such as a speakerphone or videoconference as long as a quorum is physically present at the meeting.

Section 4: Public Input

All interested persons shall be allowed to express their views (oral and/or written) at Commission meetings regarding matters within the jurisdiction of the Commission.

Section 5: Meeting Minutes

Minutes shall be taken at every regular and special Commission meeting and shall be approved by a majority vote of the Commission. All meetings of the Ethics Commission shall be public and written minutes of the proceedings thereof shall be available to the public upon request.

Section 6: Regular Meetings

The Ethics Commission shall hold regular monthly meetings.

Section 7: Notice of Meetings

Notices of all regular and special Commission meetings shall be posted on the Palm Beach County Meeting Calendar. Agendas and attachments shall be hand delivered, e-mailed or faxed to each Ethics Commissioner at least 24 hours before the meeting. Notice of regular meetings

shall be posted at least 72 hours before the meeting. Notices of special meetings shall be posted at least 24 hours before the meeting.

Section 8: Closed Sessions

The Ethics Commission may hold closed sessions at regular meetings for purposes of confidential discussion related to preliminary investigations, legal sufficiency and probable cause determinations.

Section 9: Special Meetings

Special meetings may be called to address specific matters pursuant to public notice requirements. Reasonable notice for the purposes of a special meeting is presumed to be 24 hours.

Section 10: Public Comment

Public comment is permitted on all agenda items with the exception of probable cause proceedings and the adjudicatory portion of final hearings involving complaints before the commission. The chairperson may establish and enforce rules pertaining to the orderly conduct of public comment, including time, manner and decorum.

Historical Changes

July 7, 2011 Section 10 added regarding Public Comment.

ARTICLE IX-VOTING

Section 1: Voting and Abstention

Each member at an Ethics Commission meeting shall vote on all matters put to a vote, unless that member is excused from voting or unless that member may have a conflict of interest regarding the item.

Section 2: Recusal

A member of the Commission may recuse himself or herself from voting on a matter if the member has a conflict of interest. If the member abstains from voting, the member must state the reason for the recusal on the record.

Section 3: Disqualification

A member of the Commission on Ethics may be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final hearing for bias, prejudice or interest. Disqualification may be raised by the Respondent, The Advocate or any member of the Commission.

Section 4: Voting by Proxy

A member may not vote by proxy.

ARTICLE X-PARLIAMENTARY PROCEDURE

Section 1: Robert's Rules of Order

Except where the Code or other rules provide to the contrary, or in the case of emergency, meetings shall be governed by Robert's Rules of Order.

ARTICLE XI-BYLAW AMENDMENTS

Section 1: By-laws

These by-laws shall be reviewed as necessary. They may be amended at any regular meeting of the Commission by a majority vote of those present, provided such proposed amendments are circulated in writing to all Commissioners at least ten days prior to such meeting and ten days public notice shall be posted.

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VI – RULES OF PROCEDURE UPDATE

Staff submits proposed changes to the Commission on Ethics Rules of Procedure as follows:

Staff Recommendation:

1. Table of Contents added at beginning of document
2. Section 2: Advisory Opinions, Section 3: Complaints-general Rules
 - 2.1(a)1 Code of Ethics-Ordinance Number updated
 - 2.1(a)2. Commission on Ethics-Ordinance Number updated
 - 2.1(a)3. Lobbyist Registration-Ordinance Number updated
 - 2.1(a)4.
 - 3.2(a)1 Code of Ethics-Ordinance Number updated
 - 3.2(a)2. Commission on Ethics-Ordinance Number updated
 - 3.2(a)3. Lobbyist Registration-Ordinance Number updated
 - 3.2(a)4.
3. Historical changes are noted throughout the document have been noted so that a timeline of all changes made are kept within the document itself.

**PALM BEACH COUNTY COMMISSION ON ETHICS
RULES OF PROCEDURE**

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1. GENERAL RULES

1.1 Purpose and Construction of Rules

- a) These rules are adopted for the following purposes:
 - 1. To establish and explain the practice and procedures followed by the Commission and its employees performing its duties under the law; and
 - 2. To provide specific guidance necessary to encourage and ensure full compliance with all laws administered and enforced by the Commission.
- b) A person's obligation to comply with a requirement or prohibition established by ordinance exists even if this title is silent concerning a statutory requirement.
- c) These rules should always be construed in a manner consistent with all applicable constitutional and statutory requirements.

1.2 Authority to Adopt Rules

These rules are adopted under the authority granted to the Commission on Ethics under Article V. section 2-257 of the Palm Beach County Code and by any other law administered and enforced by the Commission on Ethics that establishes the Commission's authority to adopt rules.

1.3 Amendment to Rules

Rules of Procedure shall be reviewed as necessary. They may be amended at any regular meeting of the Commission by a majority vote of those present.

1.4 Jurisdiction

The jurisdiction of the Commission on Ethics shall extend to any person required to comply with the Palm Beach County Code of Ethics, Lobbyist Registration and Post Employment Ordinances.

1.5 Computation of Time

- a) This paragraph provides how to compute a period of time prescribed or allowed by this section, by any order of the Ethics Commission or by any applicable ordinance. The day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would be a

Saturday, Sunday or a legal holiday, the period is extended until the next day that is not a Saturday, Sunday or legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the Palm Beach County governmental offices are closed for a holiday.

- b) Except where otherwise noted herein, a document may be deemed to be filed or served when it is deposited with the United States Postal Service, properly addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.
- c) A document filed or served by the delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark.

1.6 Disclosure of Conflicts

Commissioners should make reasonable efforts to keep informed about matters that could reasonably raise questions about his or her ability to conduct the proceedings impartially and disclose these matters on the record. These matters include: past, present, and current relationships and affiliations of a personal, a professional, or a financial nature. Commissioners should disclose such relationships, but are permitted to abstain from voting and participating in a proceeding **only** if their participation would result in a special financial benefit as described in §2-443(c) *Disclosure of voting conflicts*.

Historical Changes

Nov 7, 2013 Subsection 1.6 added regarding disclosure of conflicts.

2. ADVISORY OPINIONS

2.1 Subject of an Advisory Opinion

- a) The Commission will issue a written advisory opinion on the following laws to a person qualified to make a request under paragraph 2.2 of this section (relating to Persons Eligible to Receive an Advisory Opinion):
 1. CODE OF ETHICS, ARTICLE XIII SECTION 2-441 to 2-448 (Ordinance no. 2009-051)
 2. COMMISSION ON ETHICS, ARTICLE V SECTION 2-254 to 2-260 (Ordinance no. 2009-050)
 3. LOBBYIST REGISTRATION, ARTICLE VIII SECTION 2-351 to 2-357 (Ordinance nos. 2003-018/2005- 055)
 4. POST EMPLOYMENT, ARTICLE VI SECTION 2-141 to 2-146 (Ordinance no. 88-30)
- b) The Commission will not issue an advisory opinion that concerns the subject matter of pending litigation known to the Commission.

2.2 Persons Eligible to Receive an Advisory Opinion

A person who is subject to any of the laws listed in paragraph 2.1 (a) of this section may request an opinion regarding the interpretation or application of any of the ordinances under the Commission's jurisdiction to himself or herself.

2.3 Request for an Advisory Opinion (Form Requirements)

All requests of advisory opinions must be in writing and contain the following information:

- a) Name, address and telephone number of the requesting party.
- b) Status of the requesting party through which jurisdiction of the Commission is invoked.
- c) A brief fact scenario forming the basis of the request for the advisory opinion. The fact scenario must contain all relevant information for which the requesting party seeks ethical guidance. This includes, but is not limited to, all relationships, personal and contractual, relevant to the requested advisory opinion.
- d) Advisory opinion may be submitted via U.S. Mail, fax, hand-delivered or e-mail directed to ethics@palmbeachcountyethics.com. No request will be processed that does not contain sufficient factual or identification information as required by this section.

2.4 Advisory Opinion Intake

- a) All requests for advisory opinions will be initially reviewed by the Executive Director or staff designee in a timely manner.
- b) A written acknowledgment of receipt will be sent to the requesting party by U.S. Mail, fax or e-mail response.
- c) An initial determination of jurisdiction will be made during the intake process.
- d) If jurisdiction is lacking, the requesting party will be sent a declination letter due to the lack of jurisdiction.
- e) If valid jurisdiction is determined, but the face of the request contains insufficient factual information, the requesting party will be contacted and asked for additional relevant information. Response is required within 30 days. The failure of the requesting party to respond with additional information will result in closure of the file.

- f) An advisory opinion request may be withdrawn by the submitting party in writing no later than ten days prior to the public meeting wherein the commission on ethics is to consider the request.

Historical Changes

- Sept 2, 2010 Addition Subsection 2.4(f) to reflect that once submitted, an advisory opinion request may not be withdrawn by the submitting party.
- July 7, 2011 Subsection 2.4(f) revised to say an advisory opinion may be withdrawn by submitting in writing no later than 10 days of meeting.

2.5 Processing Advisory Opinions

- a) Once jurisdiction and sufficient factual information are determined to exist on the face of the request, the Executive Director or his designee will make an initial substantive determination based on the Code of Ethics, Lobbyist Registration or Post Employment Ordinances.
- b) Once an initial determination has been made a draft advisory opinion letter will be written and reviewed by the Executive Director (when written by a designee).
- c) The Executive Director, submit a draft advisory opinion or, in the alternative, the initial request for advisory opinion directly to the COE for advice and guidance.
- d) When the facts of the request involve issues substantially similar to previously reviewed advisory opinions, or the plain language of the appropriate County Ordinance directly answers the request without ambiguity, the Executive Director will submit a draft advisory opinion to the Chairperson or Vice Chairperson of the COE who will review the opinion and approve or recommend that it be submitted to the COE for advice, guidance or approval in accordance with rule 2.5(c). If preliminary approval is given, the Executive Director will respond prior to the next regular meeting, subject to consent agenda approval at that meeting.
- e) Opinions set on the consent agenda may be removed during a COE meeting by request of a Commissioner. The opinion will then be discussed and voted on individually in a manner consistent with rule 2.5(c).
- f) All requests for advisory opinion will be processed within a reasonable time.

Historical Changes

- April 5, 2012 Subsections 2.5(b) and (d) amended to require The Executive Director to write or review (if written by a designee) draft opinions. Submission of all advisory opinions to the COE is mandatory, not discretionary. Since all opinions are submitted to the COE for review, section (c) is stricken since this section would make submission discretionary.
- April 5, 2012 Language of Subsection 2.5(f) referencing sections 2.7 and 2.5(c) deleted as to processing of opinions.
- April 5, 2012 Subsection 2.5(d) created which sets forth protocols for regular agenda and consent agenda opinions. With regard to consent agenda opinions, review and approval by the Chairperson or Vice Chairperson is required. If not approved, the opinion is removed from the consent agenda and placed on the regular agenda for discussion.

2.6 Expedited Responses

When the requesting party so indicates, and the facts support an expedited review of a request for advisory opinion, the Executive Director will confer with the COE Chairperson or Vice Chairperson to determine whether: to set the matter for review at the next scheduled meeting; to set a special meeting of the COE to review the request; or to have the Executive Director respond prior to the next regular meeting.

2.7 Advisory Opinion Letter Form

- a) All advisory opinion letters shall contain the following:
- b) A brief recitation of the factual scenario as contained in the written request.
- c) The applicable sections of the relevant County Ordinance.
- d) An opinion as to whether the County Ordinances apply to the requesting party.
- e) An opinion as to whether the requesting party is/would be in compliance with the applicable County Ordinance.
- f) If deemed appropriate by the COE, additional comment regarding ethics, appearance of impropriety or similar advice to the requesting party based upon the factual scenario as presented.
- g) Signatures of the Executive Director or COE Staff Counsel.

Historical Changes

Nov 3, 2011 Subsection 2.8 (Advisory Opinion Letter Form) amended to remove signature requirement of both the ED and Chair/Vice Chair and add Staff Counsel. Only one signature required.

April 5, 2012 Subsection 2.7 (Response by the ED) deleted. The ED does not have independent authority to issue opinions under sec. 2-260.9 which requires "an advisory opinion shall be rendered by the commission on ethics on a timely basis..."

2.9 Publication of Advisory Opinions

Each advisory opinion issued by the Commission shall be numbered, dated and published.

Historical Changes

Oct 4, 2012 Subsection 2.9 amended to remove language about redacting the requestor's name.

3. COMPLAINTS-GENERAL RULES

3.1 Scope of Section

This section applies to sworn complaint proceedings before the Commission. This section is intended to more clearly define the procedure required by the ordinance and shall be construed to ensure the fair and expeditious determination of a sworn complaint.

3.2 Subject Matter of a Sworn Complaint

- a) The Ethics Commission may only consider complaints concerning the following ordinances:
1. CODE OF ETHICS, ARTICLE XIII SECTION 2-441 to 2-448 (Ordinance no. 2009-051)
 2. COMMISSION ON ETHICS, ARTICLE V SECTION 2-254 to 2-260 (Ordinance no. 2009-050)
 3. LOBBYIST REGISTRATION, ARTICLE VIII SECTION 2-351 to 2-357 (Ordinance nos. 2003-018/2005- 055)
 4. POST EMPLOYMENT, ARTICLE VI SECTION 2-141 to 2-146 (Ordinance no. 88-30)
- b) The Commission will not consider a complaint regarding:
1. An allegation involving an ordinance outside the jurisdiction of the Commission on Ethics.
 2. An alleged violation that occurred before May 1, 2010, for matters involving Palm Beach County, and before June 1, 2011, for matters involving municipalities within Palm Beach County. For all other public entities an alleged violation that occurred prior to the effective date of contract with the Commission on Ethics.
 3. An alleged violation when the complaint is filed more than two (2) years after the violation is alleged to have occurred, unless a person, by fraud or other devices, prevented discovery of the violation.
- c) The Commission will defer consideration of a complaint regarding:
1. An alleged violation, upon the written request of the State Attorney, U.S. Attorney or the chief of any other law enforcement agency. All investigative records remain confidential and exempt from disclosure in accordance with section 119, Florida Statutes and subject to paragraph 3.3 below during the tolling period.
 2. An alleged violation which is the subject of an active criminal prosecution.
 3. Deferral of a complaint tolls any period of time prescribed or allowed pursuant to the applicable ordinances.

- d) Where an official or employee of Palm Beach County is alleged to have violated an ordinance within the jurisdiction of the Commission on Ethics and based upon the same set of facts is subject to an ongoing disciplinary action initiated by Palm Beach County, the Commission shall stay consideration of a complaint until the conclusion of the personnel proceeding.
- e) Where the allegations of the complaint are the subject of a personnel proceeding, the statute of limitation is tolled until the termination of said personnel proceeding or the exhaustion of administrative remedies.

Historical Changes

Sept 1, 2011 Subsection 3.2(b)2. updated to include municipality jurisdiction as of June 1, 2011. Ongoing jurisdiction of the county government remains as May 1, 2010. For municipalities, jurisdiction commences on June 1, 2011. In anticipation of additional entities contracting for the services of the COE, the effective date will be the date of contract with that entity.

3.3 Public Records Exemption

- a) All records held by the Commission on Ethics and its staff related to an active investigation are confidential and exempt from disclosure unless and until either:
 - 1. Confidentiality is waived in writing by the respondent; or
 - 2. The Commission orders the complaint dismissed; or
 - 3. The preliminary investigation is complete and a probable cause determination is made by the Commission; or
 - 4. The Commission orders a public hearing.
- b) When confidentiality is waived, the Commission orders the complaint dismissed, the preliminary investigation is complete and a probable cause determination is made by the Commission, or the Commission orders a public hearing, all materials related to the complaint shall become public records available to the public as provided in Chapter 119, Florida Statutes, except to the extent the materials are otherwise exempted from disclosure under the public records law.
- c) The confidentiality provided by this procedure shall not prohibit the Commission or its staff from advising the respondent or the complainant about the status of the complaint proceeding.

3.4 Press Inquiries

All press inquiries regarding a pending complaint should be referred to the Executive Director. Prior to a finding of probable cause, no probable cause or a dismissal of the complaint, the Ethics Commission staff are prohibited from confirming or denying the existence of any complaint regarding any person or department.

3.5 Frivolous or Groundless Complaints

- a) In any case where the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint, the Commission shall order the complaining party to pay any costs and attorney's fees incurred by the Commission and/or the Respondent. A complaint is deemed to be frivolous or groundless when there is a complete absence of any justifiable issue of either law or fact raised by the complainant as defined in Section 57.105, Florida Statutes, or is found to have been filed with malicious intent and with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains materially false allegations.
- b) The determination of the Commission on Ethics regarding whether a complaint is frivolous or groundless is deemed conclusive.
- c) If the Commission on Ethics determines that a filed complaint was frivolous, groundless or with false allegations or reckless disregard, the COE shall order the complaining party to pay any costs and attorneys fees incurred by the Commission and/or the Respondent.

3.6 Hearing on Costs and Fees

Upon the dismissal of a complaint, and upon a written motion by the Executive Director or Respondent for costs and fees on grounds as provided in paragraph 3.5, the Commission on Ethics may set a hearing to determine costs and fees. Costs and Fees hearings will be conducted as follows:

- a) Written requests for costs and fees must be submitted to the Commission within sixty (60) days of dismissal and contain a detailed, itemized list of costs and fees associated with the processing, investigation and defense of the alleged complaint.
- b) Upon receipt of the written request, the Executive Director will, in a timely manner, set the matter for a hearing before the Commission to determine costs and fees.
- c) Upon good cause shown, as described in paragraph 3.9, the costs and fee hearing may be continued.
- d) Upon a finding by the Commission on Ethics to assess costs and fees against the Complainant, the manner of enforcement shall be as described in section J (Restitution).

3.7 Dismissal of Violation

The Commission on Ethics may, at its discretion and at any stage of the process:

- a) Dismiss a complaint upon determining that the public interest would not be served by proceeding further; or
- b) Dismiss a complaint and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial; or
- c) Dismiss a complaint in accordance with a request from the State Attorney, U.S. Attorney of other law enforcement agency.

3.8 Length of Time Between Complaint and Final Order

The Commission on Ethics shall, within twelve (12) months of the filing of a complaint, render a final order disposing of said complaint unless extended by the Commission for good cause.

3.9 Good Cause

The time period for determination of legal sufficiency and probable cause in complaint proceedings may be extended for good cause. "Good Cause" shall include but not be limited to failure of the Commission on Ethics to hold a regular meeting within the time frame required for a legal sufficiency or probable cause determination; a lack of quorum to make a determination due to the recusal of an ethics commissioner and a timely filed motion for continuance or request for extension of time filed by the Advocate or the Respondent.

4. PRELIMINARY INVESTIGATIONS

4.1 Staff Procedures Upon Receipt of a Complaint

- a) Upon receipt of a sworn written complaint, staff shall stamp on the face thereof the date on which the complaint was received in the Commission office. Each complaint received shall be given a complaint number which shall be entered on the complaint itself. Any document related to the complaint shall be entered into the complaint file.
- b) Within twenty (20) days of a preliminary finding of legal sufficiency, the Executive Director or designee shall forward a copy of the complaint and all documents in support thereof to the Respondent.

4.1.1 Self-Initiated Complaints

The Inspector General, Executive Director of the Commission on Ethics or the State Attorney may initiate a sworn written complaint with the Commission on Ethics. Such complaint will be deemed legally sufficient.

4.1.2 Preliminary Inquiry of Commission on Ethics

In determining whether or not legal sufficiency exists to support a self-initiated complaint the Commission on Ethics may undertake a preliminary inquiry into the facts and circumstances involving a possible violation of an ordinance within its jurisdiction. A preliminary inquiry is not subject to public records disclosure.

4.1.3 Preliminary Inquiry Protocols

- a. Upon receipt of information which may form the basis of a violation, staff may review documents and conduct interviews prior to a finding of legal sufficiency.
- b. After conducting an inquiry, if no legal sufficiency is found, staff will prepare a memorandum of inquiry stating the facts and circumstances supporting its finding. A finding of no legal sufficiency after inquiry is thereafter subject to public records disclosure.
- c. Upon a finding of legal sufficiency, the matter under inquiry will be processed in accordance with Sections 3 and 4 as contained herein.

Historical Changes

Sept 1, 2011 Subsection 4.1(b) revised to require notification to the Respondent within 20 days of finding legal sufficiency.
March 3, 2011 Subsections 4.1.1, 4.1.2 and 4.1.3 regarding self-initiated complaints added.

4.2 Review for Legal Sufficiency and Order of Preliminary Investigation

- a) Within a reasonable time the complaint will be reviewed by the Executive Director and/or Counsel to the Commission on Ethics and a determination will be made as to legal sufficiency.
- b) In order to be found legally sufficient, a complaint must:
 1. Be in writing and executed on a form prescribed by the Commission on Ethics;
 2. Allege the elements of a violation within the jurisdiction of the Commission on Ethics;
 3. Be based substantially upon the personal knowledge of the Complainant; and
 4. Be signed under oath or affirmation by the Complainant.

- c) After the complaint has been reviewed and found to be in the proper form, the complaint shall be reviewed by the Executive Director or designee in order to determine whether the Commission has jurisdiction over the matter; that is whether it concerns an ordinance under the Commission's jurisdiction. Complaints need not be as precise as would be required by the rules of civil procedure and shall be deemed sufficient if the complainant under oath and substantially upon personal knowledge alleges matters, which, if true, would constitute a violation of an ordinance under the Ethics Commission's jurisdiction.
- d) The Executive Director or designee shall prepare a memorandum regarding the legal sufficiency of all complaints. If the Executive Director or designee finds the complaint to be legally insufficient, the Executive Director or designee will provide the draft memorandum of no legal sufficiency to the Commission.
- e) Commissioners shall have seven (7) days to review the draft memorandum and contact the Executive Director. Upon review of the draft memorandum, a Commissioner may direct the Executive Director to submit the complaint for review in executive session at the next regularly scheduled meeting. Absent such request, the Executive Director or designee shall issue a finding of no legal sufficiency.
- f) Upon a finding of no legal sufficiency by the Executive Director or designee, the complaint, memorandum of no legal sufficiency and all documents related thereto shall become a public record and constitute a public record.
- g) Upon a finding of legal sufficiency and pursuant to Section 112.324, Florida Statutes, the Commission may meet in executive session to determine whether probable cause exists. Upon hearing the matter the commission may find probable cause; dismiss it, or take such other action as may be appropriate. In any case where a complaint is dismissed, the public report and order dismissing the complaint together with the complaint itself and all documents related thereto shall become a public record and constitute a public record.

Historical Changes

Nov 7, 2013 Subsection 4.2 amended to allow the ED to administratively dismiss legally insufficient complaints without presentation to the COE in executive session.

4.3 Assignment of Advocate

Upon a finding of legal sufficiency the Executive Director will assign an Advocate with the responsibility to oversee the investigation and to present cases to the Commission on Ethics. The Advocate may serve on a volunteer basis.

4.3.1 Advocate Conflict of Interest

At all times during the investigation and presentation of a legally sufficient complaint, the Advocate has an ongoing duty to seek justice without predisposition or bias. In that regard there is an ongoing duty to disclose to the Executive Director any financial, personal or professional interest in the proceedings immediately upon discovery of the conflict.

4.3.2 Replacement of Advocate upon Disclosure of Conflict

Upon disclosure of a conflict, the Executive Director shall immediately replace the Advocate and notify the Respondent.

4.3.3 Applicability of Florida Bar Rules of Professional Conduct

The Advocate shall be governed by *Chapter 4. Rules of Professional Conduct* as promulgated by the Florida Bar.

Historical Changes

March 3, 2011 Subsections 4.3.1, 4.3.2 and 4.3.3 regarding conflict of interest added.

4.4 Preliminary Investigations

- a) A preliminary investigation shall be undertaken by the Commission on Ethics of each legally sufficient complaint over which the Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred.
- b) Investigations shall be conducted by staff or by any other person or agency so designated by the Commission on Ethics under the supervision of the Executive Director or designee.
- c) Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related.
- d) If the Commission on Ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall set the matter for a public hearing to be held within one hundred twenty (120) days of the probable cause determination and notify the Complainant and Respondent via certified mail, hand delivery or courier.
- e) If the Commission on Ethics finds from the preliminary investigation no probable cause to believe that a violation has been committed, the Commission shall dismiss the complaint with the issuance of a report to the Complainant and Respondent.

Historical Changes

4.5 Withdrawal of Complaints

After a complaint has been filed with the Commission, the Commission may permit the complainant to withdraw the complaint only for good cause shown. Withdrawal shall be requested in writing and signed by the complainant(s). "Good Cause" shall be determined based upon the legal sufficiency or insufficiency of the complaint to allege a violation of an ordinance under the Commission's jurisdiction, the stage of the disposition of the complaint arrived at before the request was received and the reasons given by the complainant for wishing to withdraw the complaint. If withdrawal is permitted, the Commission shall order the complaint dismissed and shall proceed as if the complaint had been found insufficient under subsection 4.2.

4.6 Stay of Proceedings

The Respondent, the Advocate, the State Attorney's Office and the United States Attorney's Office may motion for a stay of the proceedings at any time prior to the commencement of a public hearing regarding a matter before the Ethics Commission if the Respondent is the subject of an active criminal investigation or has been charged by information or indictment with charges arising out of the same factual allegations contained in the complaint.

4.6.1 Referral to other authorities for prosecution

The Commission on Ethics, or the Executive Director on behalf of the Commission, shall refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate.

4.6.2 Notice to Commission of referrals

The Commission on Ethics shall be notified of a referral made by the Executive Director pursuant to Rule 4.6.1.

4.6.3 Manner of Notice to Commission/Public records exemption

The COE Intake Manager shall generate a separate case number for any referral by the Executive Director to the state attorney or other appropriate official or agency having authority to initiate prosecution. The referral shall be scheduled for review in executive session at the next regularly scheduled meeting of the Commission. Unless disapproved by a majority of the Commission, the executive session shall remain unpublished and exempt from public records disclosure until such time as the prosecuting authority declines or completes its investigation and notifies the Commission that the matter is no longer exempt from disclosure pursuant to chapter 119, Florida Statutes.

Nov 1, 2012 Subsections 4.6.1, 4.6.2 and 4.6.3 regarding referrals added.

4.7 Delegation of Authority

The Commission hereby delegates to its investigators the authority to administer oaths and affirmations, delegates the authority to issue subpoenas to the Executive Director or Counsel to the Commission and authorizes staff investigators to serve any subpoena issued under the Commission's authority.

4.8 Subpoenas during Preliminary Investigation

Upon recommendation of the Executive Director, Counsel to the Commission, the Advocate or the Inspector General, the Commission Chair, Co-Chair or other member authorized by the Commission may authorize the issuance of subpoenas or subpoenas duces tecum. Each subpoena shall be signed by the Executive Director, Counsel to the Commission or other member authorized by the Commission and shall state the person, documents, or other things to be subpoenaed. Each subpoena further shall name the person before whom the witness is to give testimony, and shall state in general terms the subject matter of the testimony to be elicited. If documents or other things are to be produced, the subpoena shall describe the same with as much specificity as reasonably practicable. The subpoena shall state clearly on its face that it is issued by the Commission on Ethics in accordance with its authority to investigate breaches of public trust. Such subpoenas shall be issued for investigative purposes only and neither the complainant, the respondent nor their counsel shall be entitled to attend the investigative proceeding at which the witness is to give a sworn statement unless the complainant or the respondent is the person subpoenaed.

4.9 Commencement of Investigations

- a) A preliminary investigation shall be undertaken of every legally sufficient complaint over which the Ethics Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred.
- b) Investigations shall be conducted by Ethics Commission staff under the direction of the Executive Director.
- c) Investigations shall be limited to the allegations in the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue.

4.10 Wrongful Acts Unrelated to the Complaint

If during the course of an investigation, evidence of a wrongful act not materially related to the complaint at issue is discovered by an investigator, such evidence shall be reported to the Executive Director and the Inspector General in a separate investigator's report. Upon receipt of the investigator's report containing evidence of a wrongful act not materially related to the complaint at issue, the Executive Director or the Inspector General shall:

- a) As soon as practicable forward evidence of the commission of a crime to the appropriate law enforcement official; or
- b) Forward evidence of the Commission of any other wrongful act to the appropriate disciplinary or law enforcement official as soon as practicable following the conclusion of the preliminary investigation.

4.11 Conduct of Preliminary Investigation

- a) Investigator Contacts with Potential Witnesses – The investigator shall inform the person being interviewed of the confidential nature of the investigation and of the complaint, unless the respondent has waived confidentiality.
- b) Investigator to be Impartial – An investigator shall be impartial and unbiased in the conduct of the preliminary investigation. An investigator shall collect all evidence materially related to the allegations of the complaint, whether such evidence tends to prove or disprove the allegations. If an investigator feels that for any reason, he or she cannot be impartial or unbiased during the preliminary investigation then such investigator shall so notify the Executive Director and shall immediately discontinue working the investigation.
- c) Investigator's Report – Upon completion of the preliminary investigation, the investigator shall prepare a report for presentation to the Advocate. The report shall contain a synopsis of all pertinent information obtained through interview of witnesses, documentary evidence or other sources that supports the investigator's findings and recommendations.

4.12 Investigation of Facts and Parties Materially Related to Complaint

The Ethics Commission has the duty to investigate all facts and parties materially related to the complaint at issue.

- a) Facts materially related to the complaint include facts which tend to show:
 - 1. A separate violation of an ordinance under the jurisdiction of the Commission on Ethics by a Respondent other than as alleged in the complaint and consisting of separate instances

- of the same or similar conduct by Respondent as alleged in the complaint; or
2. A separate violation of an ordinance under the Ethics Commission's jurisdiction by the Respondent from that alleged in the complaint which arises out of or in connection with the allegations in the complaint.
- b) Where facts materially related to the complaint are discovered by the investigator during the course of the investigation, the Executive Director shall order an investigation of them and the investigator shall include them in the investigative report. The Advocate may recommend and the Commission on Ethics may order a public hearing as to those violations of an ordinance under its jurisdiction. From that point in the proceedings until final disposition of the complaint, such facts shall be treated as if they were initially alleged in the complaint at issue.
- c) A party materially related to the complaint means:
1. Any other public officer or employee within the same agency as the Respondent who has engaged in the same conduct as that alleged against the Respondent in the complaint at issue; or
 2. Any other public officer or employee who has participated with the Respondent in the alleged violations as a co-conspirator or an aider and abettor.
- d) Whenever the investigation of the complaint at issue indicates the existence of a party materially related to the complaint, the Executive Director shall order an investigation of that party. The investigator shall maintain a separate investigatory file and prepare a separate investigative report, neither of which shall be made available to the Complainant or the original Respondent. The Advocate may recommend and the Commission may order a probable cause hearing as to those violations which are indicated by the Investigator's report to have been committed by such a party. Separate proceedings from the original complaint at issue shall be commenced against such a party who shall be deemed a Respondent by sending that person a copy of the investigator's report and the Advocate's recommendation not less than fourteen days prior to the hearing. From that hearing until final disposition of the matter, the charges against such a party (Respondent) shall be treated as if they had been included in a complaint filed against such party. If requested or otherwise ordered by the Commission, a separate public hearing shall be held on the matter unless consolidation with the original complaint is ordered.

4.13 Counsel

- a) Respondent – Respondent may appear on his own behalf or may be represented by a lawyer or other qualified representative. All notices and communications to a Respondent represented by a lawyer or other qualified representative shall be made through the Respondent's lawyer or qualified representative.
- b) Advocate – The Advocate representing the matter before the Commission on Ethics shall be

the legal counsel retained by the Commission to serve as Advocate. Should the Advocate have a conflict of interest, the Executive Director may appoint conflict free counsel to serve as the Advocate in any matter.

- c) Complainant – To the limited extent the Complainant is entitled to participate in or observe Ethics Commission proceedings, the Complainant may be represented by legal counsel. All notices and communications to a Complainant represented by counsel shall be made through Complainant's lawyer.
- d) Appearances – Any counselor or qualified representative must file a notice of appearance with the Commission on Ethics.
- e) Qualified Representative – A qualified representative must file a motion, with any notice of appearance, at least five days prior to any appearance before the Commission, stating his or her qualifications to appear as provided in Rule 28-106.106, Florida Administrative Code. The Chair or his or her designee must find that the representative meets the qualifications enumerated in the rule prior to the representative appearing for the Respondent in any proceeding or settlement negotiations.

5. PROBABLE CAUSE DETERMINATION

5.1 Advocate's Recommendation

The Advocate shall review the investigator's report and shall make a written recommendation to the Commission for the disposition of the complaint. If the Advocate recommends that a public hearing be held, the recommendation shall include a statement of what charges shall be at issue at the hearing.

5.2 Notice to Respondent

The Respondent shall be given not less than ten days from the date of mailing of the Advocate's recommendation within which time to file with the Commission a written response to the recommendation. The Respondent may also file a motion in opposition to the proceeding (including motions to dismiss, to strike and for a more definite statement) upon receipt of the Advocate's probable cause recommendation.

5.3 Notice of Probable Cause Hearing and Right to Attend

The Respondent, his or her counsel and the Advocate shall be permitted to attend the hearing at which the probable cause determination is made. Notice of the hearing shall be sent to the

Respondent and Advocate at least ten days before the hearing. This time period may be shortened with the consent of the Respondent, or without the consent of the Respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission so long as reasonable notice under the circumstances is given.

5.4 Exemption from Public Hearing Requirements of 286.11

A probable cause hearing is not subject to section 286.11, Florida Statutes. Pursuant to Section 112.324, Florida Statutes, complaints of a local ethics violation remain confidential as a part of the investigatory process until such time as a probable cause determination is made, unless the Respondent requests in writing that said proceeding be public.

Historical Changes

Dec 2, 2010 Subsection 5.4 amended to replace words "alleged violator" with "Respondent"

5.4.1 Procedure for Release of Public Records Upon Probable Cause Determination

When called upon to make a probable cause determination of a legally sufficient complaint, the Commission shall adjourn the public meeting and reconvene in executive session. Upon determination of probable cause or dismissal the Commission shall reconvene the public hearing and announce its decision. At that time, all investigative information is subject to disclosure. If the Commission determines that further investigation is required the investigative information will remain exempt from disclosure until such time as the Commission receives sufficient information and renders a probable cause determination.

Historical Changes

Dec 2, 2010 Subsection 5.4.1 added regarding procedure for release of public records upon PC determination.

5.5 Scope of Probable Cause Determination

The Respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Commission, based upon the investigator's report and recommendation of the Advocate, before the probable cause determination.

5.6 Probable Cause Determination

At a hearing to determine probable cause, the Commission: may continue its determination to allow further investigation; may order the issuance of a public report of its investigation if it finds no probable cause to believe that a violation of an Ordinance within its jurisdiction occurred; may

order a public hearing in the matter, or may enter into such stipulations and settlements as it finds to be just and in the best interests of the citizens of Palm Beach County. In making its determination, the Commission may consider:

- a) The sufficiency of the evidence against the Respondent as contained in the complaint and the Advocate's probable cause determination;
- b) The admissions and other stipulations of the Respondent, if any;
- c) The nature and circumstances of the Respondent's actions;
- d) The expense of further proceedings and
- e) Such other factors as it deems material to its decision. If the Commission orders a public hearing of the complaint, the Commission shall determine what charges shall be at issue for the hearing.

5.7 Notification of Manner of Disposition

Upon the Commission's ordering a public hearing of a complaint or a public report, the Executive Director shall so notify the Complainant and the Respondent in writing.

5.8 Setting of Public Hearing

Upon a finding of probable cause to believe a violation has occurred, the commission shall set the matter for a final hearing to be held within one hundred twenty (120) days unless extended by the Commission for good cause based on the request of a party or on its own initiative.

5.9 Default

If a Respondent fails to timely file a request for a public hearing or fails to appear at the public hearing, the Ethics Commission may find the Respondent in default and issue an appropriate public report and final order.

Historical Changes

Sept 1, 2011 Subsection 5.9 (Setting of Public Hearing) is restatement of rules setting public hearings within 120 days of a finding of probable cause.

Nov 3, 2011 Subsection 5.8 (Request for Public Hearing) deleted. Languages irrelevant and inapplicable since cases are automatically set within 120 days of a finding of PC. Remaining subsections renumbered.

6. PUBLIC HEARINGS

6.1 Public Hearings

Public Hearings may be conducted by the full Commission on Ethics or by a three member panel of the Commission designated by the Chair or his or her designee. Proceedings before the Commission shall be governed by the Rules of Civil Procedure except where otherwise designated herein.

6.2 Parties to Public Hearing

The person accused of a violation of an ordinance under the Commission's jurisdiction shall be the only party unless consolidation is granted. The Advocate shall be a full participant in the proceedings and shall present all the evidence relevant to the cause that was produced by the preliminary investigation and such additional evidence as may be obtained through discovery or further investigation.

6.3 Consolidation of Cases

The Commission on Ethics may consolidate cases if there are matters which involve identical parties or arise out of related issues of law and fact and if it appears that consolidation would promote the just, speedy and economical resolution of the parties and would not unduly prejudice the rights of any party.

6.4 Disqualification of Commissioners

- a) Commission members shall be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final public hearing for bias, prejudice or interest by motion of the Respondent or Advocate but not by the Complainant. A member shall disqualify him or herself because of a financial interest.
- b) Unless good cause is shown, all motions for disqualification shall be filed with the Commission as soon as practicable. The motion shall be accompanied by an affidavit stating the particular grounds.
- c) Unless denied as untimely, the motion shall be ruled on by the Commissioner whose disqualification is sought; the ruling shall be based on the legal sufficiency of the motion and affidavit. If the motion and affidavit are found legally sufficient, the member shall disqualify himself or herself.
- d) Any Commissioner may recuse himself or herself, where to the Commissioner's own knowledge any of the grounds stated in the affidavit accompanying the motion for disqualification exist. The failure of a Commissioner to recuse himself or herself shall not be assignable as error or subject to review.

Historical Changes

- Sept 1, 2011 Amend Subsection 6.4(a) to change the word “may” in the first line to the word “shall”, include disqualification of a commission member be done by a motion of respondent or advocate for *bias, prejudice or interest*, and distinguish between financial and non-financial disqualification.
- Nov 7, 2013 Subsection 6.4(b) amended to clarify commissioner disqualification terms and procedures.

6.5 Ex-Parte Communications

A commissioner shall not initiate nor consider any ex-parte communication relative to the merits of a pending complaint by:

- a) A public employee or official engaged in prosecution or advocacy in connection with the matter;
- b) A party to the proceeding or any person who directly or indirectly would have a substantial interest in the proposed action of the Commission or his or her authorized representative or counsel; or
- c) A complainant or any other individual who has personal knowledge of the facts underlying the proceeding, or his or her authorized representative or counsel; Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the Commission in the proceeding or shall prohibit Commissioners who are contacted by any of the above persons from referring them to Commission staff.
- d) A Commissioner who receives such ex-parte communication shall place on the record of the matter all written communications received, all written response to such communications and the substance of all oral communications received and oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party, including the Advocate, desiring to rebut the ex parte communication should be allowed to do so, if a request for the opportunity for rebuttal is made within 10 days after notice of the communication.

6.6 Subpoenas Generally

The Commission on Ethics is empowered to subpoena and investigate matters within its jurisdiction. In the case of a refusal to obey a request for documents or for an interview during an investigation, the Commission may subpoena relevant witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other relevant items. The Commission may delegate to staff the authority to administer oaths and affirmations.

6.7 Subpoenas for Discovery

At any time after the Commission on Ethics orders a public hearing of the matter, the Commission may issue subpoenas to effect discovery upon the written request of Respondent or Advocate. The requesting member shall give the name and address of each witness he or she wishes to have deposed and shall describe with particularity those documents or other items that the person wishes to have the witness produce, bring or deliver pursuant to a subpoena duces tecum. Parties may also obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390 Florida Rules of Civil Procedure. The Chairperson, Vice Chairperson or designated member of the Commission may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

6.8 Subpoenas for Public Hearing

The Respondent and the Advocate shall submit to the Executive Director a list of all witnesses he or she wishes to have subpoenaed to attend the hearing. The lists shall include the correct names and addresses of the witnesses and shall describe with particularity those documents or other items that he or she wishes to have the witness bring to the hearing pursuant to subpoena duces tecum. Subpoenas shall be issued as provided herein.

6.9 Enforcement of Subpoenas

In the case of a refusal to obey a subpoena issued to any person, the Commission on Ethics may make application to any Circuit Court of this State which shall have jurisdiction to order the witness to appear before the Commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Any person who fails to obey the order may be punished as provided by law.

6.10 Notice to Law Enforcement

At least seventy-two (72) hours prior to serving a subpoena, the Executive Director or designee shall provide written notice to the State Attorney and the U.S. Attorney for the Southern District of Florida. The Commission on Ethics shall not interfere with any ongoing criminal investigation or prosecution. If the State Attorney or U.S. Attorney notifies the Commission in writing that the Commission's investigation is interfering with an ongoing criminal investigation or prosecution, the Commission shall suspend service of the subpoena, examination of witnesses, or other investigative activities and shall stay the proceedings pursuant to the requirements of Section D. paragraph 4.6 of this document.

6.11 Motions

- a) All motions shall be in writing unless made on the record during a hearing, and shall fully state the actions requested and the grounds relied upon. The motion shall include a statement that the movant has conferred with the Advocate and all other parties of record and shall state whether there is any objection to the motion.
- b) The original written motion shall be filed with the Commission and a copy served on all parties or their attorneys. The Commission staff shall send a copy of the motion to the Chairperson.
- c) The Chairperson, Vice Chairperson or member of the Commission designated by the Chairperson, shall conduct such proceedings and make such order as are deemed necessary to dispose of issues raised by motions, but it is not required to hold a hearing on a motion in order to rule upon it.
- d) Every written motion may be accompanied by, or included in, a written memorandum stating the grounds upon which the motion is based. Other parties to a proceeding may, within seven days of service of a written motion, file written memoranda in opposition.

6.12 Motions in Opposition to a Proceeding

Motions in opposition to a proceeding including motions to dismiss, to strike and for a more definite statement may be filed at any time after the Advocate submits his or her probable cause memorandum and must be filed no later than twenty days after service of the notice of public hearing. The Chairperson, Vice Chairperson or member of the Commission on Ethics designated by the Chairperson to dispose of motions shall rule upon the motion in the manner set forth in paragraph 6.11c.

6.13 Motions to Dismiss Filed by Advocate

After probable cause is found and a public hearing is ordered by the Commission and after further investigation or discovery is made by the Advocate, the Advocate may move to dismiss the proceeding if the Advocate concludes that there is insufficient evidence to proceed to public hearing in good faith. Such a motion shall specifically state the grounds upon which it is made.

The motion shall be heard by the Commission at the next regularly scheduled meeting and the public hearing shall be continued pending a ruling by the Commission.

6.14 Prehearing Conferences

The Chairperson, or a member of the Commission designated by the Chairperson, may conduct

one or more prehearing conferences for the purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing the possibilities of settlement of the issues, examining exhibits and documents, exchanging names and addresses of witnesses and resolving other procedural issues.

6.15 Exchange of Witness Lists

Unless otherwise ordered by the Chairperson or a member of the Commission designated by the Chairperson as a result of a prehearing conference, the Advocate and the Respondent(s) or counsel for Respondent(s) shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing with a copy being provided to the Chairperson. Names and addresses of witnesses discovered subsequently shall be disclosed to the other party or parties and to the Chairperson as soon as possible. Failure to disclose the name and address of a witness may result in the exclusion of the witness's testimony, according to the rule applied in civil judicial proceedings.

6.16 Settlement

- a) The Commission on Ethics may enter into a settlement agreement at any stage of the proceedings as it finds to be just and in the best interest of the citizens of Palm Beach County.
- b) The Advocate may enter into settlement negotiations but must present all settlement proposals to the Commission for consideration and approval. Upon notification of a proposed settlement agreement, the Chairperson or member of the Commission designated by the Chairperson to dispose of pre-trial matters shall continue the Public Hearing and direct staff to place the matter before the full Commission at the next regularly scheduled meeting.

7. PUBLIC HEARING PROCEDURES

7.1 Presentation of the Case

The Advocate shall present his or her case first. The Respondent may then present his or her case. Rebuttal evidence may be permitted in the discretion of the Commission on Ethics.

7.2 Opening and Closing Statements

Opening and Closing Statements may be presented by the Advocate and the Respondent. The Advocate may make the first statement and the Respondent may follow. Rebuttal by the Advocate may be permitted or may be denied.

7.3 Evidence

- a) Stipulations may be received and are encouraged as to uncontested matters.
- b) Oral evidence shall be taken only on oath or affirmation.
- c) The Respondent and the Advocate shall have the right:
 - 1. To present evidence relevant to the issue;
 - 2. To cross-examine opposing witnesses on any matter relevant to the issue;
 - 3. To impeach any witness regardless of who first called him or her to testify.
- d) Rules of Evidence: The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in and of itself to support a finding. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The Commission shall not allow the introduction into evidence of an affidavit of a person when that person can be called to testify; this shall not preclude the admission of a deposition of such person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.

7.4 Transcript of Public Hearing

The Public Hearing proceedings shall be recorded by recording instruments or by a court reporter. Respondent may at his or her own expense provide a court reporter or recording instruments. The Commission on Ethics may provide a court reporter. No transcript of the proceedings shall be prepared unless requested by the Commission or the Respondent. If the Respondent requests that a transcript be prepared by a court reporter, the Respondent shall pay the expense of transcription. If the Respondent requests that the Commission prepare a transcript from recording instruments and the Commission grants such request, the Respondent shall pay the Commission the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript.

7.5 Proposed Public Report

After the conclusion of the hearing, the Respondent and the Advocate may present written proposed public reports, within a time designated by the Chairperson or a member of the Commission designated by the Chairperson. If a proposed public report is filed by the Respondent or the Advocate each proposed finding in the proposal that is rejected shall be accompanied by a statement summarizing the reasons for rejection.

8. PENALTY

8.1 Finding and Public Report

- a) Upon completion of the public hearing upon a finding of probable cause, the Commission on Ethics shall make a finding and public report as to whether any provision within its jurisdiction has been violated.
- b) When probable cause has been found and the Respondent has defaulted by failing to appear at the public hearing, the Commission on Ethics will make appropriate findings and orders at the next regularly scheduled meeting based upon information within its possession as well as any subsequent investigative information provided to the Commission.

Historical Changes

Sept 1, 2011 Subsection 8.1 amended to reflect that public hearings are not discretionary but automatically set upon a finding of probable cause.

8.2 Order Upon Finding of Violation

- a) Upon a public hearing, if the Commission on Ethics finds, by clear and convincing evidence, that a violation has been committed, the Commission shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The final order shall include a determination as to whether the violation was intentional or unintentional. Findings by the Commission shall be supported by competent, substantial evidence.
- b) If, by Respondent's default, no public hearing is held in the matter, the Commission may make such findings as are consistent with the investigative information and issue appropriate orders.

Historical Changes

Sept 1, 2011 Subsection 8.2(a) amended to reflect code revision of June 1, 2011 that the penalty rules include reference to the standard of proof required to find that a violation has been committed "by clear and convincing evidence, based upon competent substantial evidence in the record..."

Oct 6, 2011 Subsection 8.2(a) amended and moved "competent, substantial evidence" from first sentence to a new last sentence to remove the appearance that there were two separate standards of proof.

8.3 Enforcement and Penalties

A finding by the Commission on Ethics of a violation of the Code of Ethics, Lobbyist or Post Employment Ordinances shall subject the person to Public reprimand, a fine of up to five hundred dollars (\$500), or both. In addition, the Commission on Ethics may also order the person to pay restitution when the person or a third party has received a pecuniary benefit as a result of the

person's violation.

8.4 Rescission of Contracts or Benefits

- a) If the violation resulted in a contract, grant, subsidy, license, permit, franchise, use, certificate, development order or other benefit conferred by the County, then such contract, grant, subsidy, license, permit, franchise, use, certificate, development order or other benefit may be rescinded or declared void by the Board of County Commissioners.
- b) For the purposes of this section, upon a finding of a violation the Executive Director shall forward a copy of the Commission on Ethics Order to the County Administrator.

8.5 Compliance with Commission on Ethics Order

If a person fails to comply with an order issued by the Commission on Ethics, the Commission may make application to any Circuit Court of this State which shall have jurisdiction to order the violator to comply with the order of the Commission on Ethics. Any violator who fails to obey the order may be punished by the Court.

9. APPEALS

9.1 Appeal of Final Order

Any final order where the Commission on Ethics finds that a violation has been committed, or any advisory opinion issued by the Commission on Ethics, shall be subject to review by writ of certiorari to the Fifteenth Judicial Circuit Court in and for Palm Beach County. The Commission on Ethics shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure.

9.2 Fees

- a) A fee shall be charged by the Commission on Ethics for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such fee may be waived by the Executive Director if the party requesting the record is indigent.
- b) Costs or fees may not be assessed against the Commission on Ethics in any appeal from a final order or advisory opinion issued by the Commission on Ethics pursuant to Article V section 2-260 of the Palm Beach County Code.

9.3 Stay

Unless specifically ordered by the Commission on Ethics or by a court of competent jurisdiction, commencement of an appeal does not suspend or stay a final order or an advisory opinion of the Commission on Ethics the Chairperson, Vice Chairperson or member of the Commission designated by the Chairperson.

10. RESTITUTION

10.1 Scope of Authority

- a) The Commission on Ethics may order restitution against any person or entity covered by the Code of Ethics, Lobbyist Registration or Post Employment Ordinances.
- b) The Commission on Ethics may order restitution for any violation of any ordinance under its jurisdiction where the Respondent or a third party receives a pecuniary benefit as a result of the Respondent's violation of an ethics ordinance.
- c) Restitution may be ordered when the person or a third party has received a pecuniary benefit as a result of the person's violation.

10.2 Restitution Proceedings

- a) The Commission will conduct separate proceedings, where necessary, to determine the amount of restitution.
- b) The Advocate will present evidence regarding the appropriate amount of restitution in a particular case. The amount of restitution cannot exceed the total pecuniary benefit received by the Respondent or a third party as determined by an audit or an investigation.
- c) The Respondent may not present evidence regarding the underlying violation.

10.3 Determination of Restitution

The Commission on Ethics may order restitution for any amount not exceeding the total amount of financial benefit to the Respondent or a third party. The Commission may not order restitution for prospective financial gain. In making a determination, the Commission may consider the following factors:

- a) The severity of the offense;
- b) The amount of loss suffered by the County as a result of the Respondent's actions;
- c) The Respondent's financial circumstances and his or her ability to pay restitution;
- d) Any other factors the Ethics Commission deems appropriate

10.4 Burden of Proof

The Advocate has the burden of demonstrating the amount of financial gain by the Respondent and/or any third party as a result of the violation. The burden of proof shall be by a preponderance of the evidence and must be based on substantial competent evidence.

10.5 Settlement Agreement

The Advocate may enter into settlement negotiations for restitution prior to a restitution hearing but must present all settlement proposals to the Commission on Ethics for consideration and approval. Upon notification of a proposed settlement agreement, the Executive Director shall place the proposed settlement agreement on the next regular Commission on Ethics meeting agenda.

10.6 Order of Restitution

If, by settlement or separate proceeding, restitution is determined to be owed, the Commission on Ethics shall add restitution to the "Order Upon Finding Violation."

10.7 Enforcement Proceedings

- a) The Commission on Ethics and the Respondent may enter into a payment plan for the amount contained in the restitution order.
- b) The Commission may make application to any Circuit Court which shall have jurisdiction to order the violator to comply with the order. Any violator who fails to obey the order may be punished by the court.

11. RETENTION OF RECORDS

11.1 Advisory Opinions

All advisory opinions rendered by the Commission on Ethics shall be numbered, dated, published and posted on the Commission on Ethics website.

11.2 Complaints

All complaints submitted to the Commission on Ethics and upon a finding of probable cause shall be a public record and the files retained for two (2) years. All complaints for which there was a finding of violation shall be published and posted on the Commission on Ethics website.

11.3 Annual Gift Disclosure Report

All Palm Beach County Officials and Employees are required to report gifts valued in excess of one hundred dollars (\$100).

- a) Officials and Employees identified by State law as Reporting individuals shall continue to report in the manner provide by section 112.3148, Florida Statutes, and a copy of each report shall be filed with, and retained by, the Palm Beach County Commission on Ethics.
- b) All other Officials and Employees shall submit an annual gift disclosure report with the Palm Beach County Commission on Ethics no later than November 1, of each year for the period ending September 30 of each year. The annual gift disclosure report shall be created by the Palm Beach County Commission on Ethics and shall be in a form substantially similar in content as that required by State law.
- c) Reports received under this section shall be public records and maintained by the Commission on Ethics.

12. LOBBYIST ORDINANCE ENFORCEMENT

12.1 Failure to Comply with the Lobbyist Registration Ordinance

If the County Administrator, after a preliminary investigation, determines that a violation of the Lobbying Registration Ordinance has occurred, the matter shall be referred to the Commission on Ethics for further investigation and enforcement.

12.2 Treatment of Referrals by the County Administrator

Referrals of lobbyist violations by the County Administrator under the compliance section of the Lobbyist Registration Ordinance shall be considered sworn and legally sufficient complaints under the Commission on Ethics and Code of Ethics Ordinances.

12.3 Penalties

Upon a finding of violation by the Commission on Ethics the punishment may be imposed as provided in Article VIII section 2-357 of the Lobbyist Registration Ordinance.

Updated 11/24/2014

DRAFT



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, *Chair*
Michael S. Kridel, *Vice Chair*
Michael F. Loffredo
Carmine A. Priore
Clevis Headley

Executive Director

Steven P. Cullen

November 14, 2014

Ms. Myra Koutzen, Vice Mayor
Town of Palm Beach Shores
247 Edwards Lane
Palm Beach Shores, FL 33404

Re: RQO 14-035
Conflict of Interest

Dear Ms. Koutzen,

Your request for an expedited advisory opinion pursuant to Commission on Ethics (COE) Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Are you, as Vice Mayor for the Town of Palm Beach Shores (the Town), allowed to participate and vote on matters pertaining to a public works project for the Town when the project would benefit a condominium where you own two units?

ANSWER:

Based on the facts submitted, you may participate in the discussion and vote on the matter as long as the public works project does not benefit only your condominium.

An elected official is prohibited from using his or her official position to give himself or herself a special financial benefit not shared with similarly situated members of the general public.¹ Additionally, the official must abstain and not participate in any matter coming before his or her board, which would result in a special financial benefit, not shared with similarly situated members of the general public, to himself or herself.² Financial benefit is defined by Sec. 2-442 and the COE had opined that this means economic gain or loss.³ In the context of this question, for the benefit to be "special," it must uniquely benefit the person, rather than benefiting the town, a specific group of homeowners or condominiums, or a neighborhood.⁴

There is no bright line test or "magic number" of individuals who would need to be similarly affected to transform a personal gain into a gain shared with similarly situated members of the general public. When the size of the class affected is large, a prohibited financial gain only arises if there are unique circumstances which would enable a property owner to benefit more than the other property owners within the class.⁵ The COE, therefore, looks at the size of the class and the facts and circumstances submitted when making this

¹ §2-443(a)

² §2-443(c)

³ RQO 10-013

⁴ RQO 12-071

⁵ *id.*

determination. Where the class of persons receiving the benefit is small, the likelihood of prohibited financial benefit is much greater.⁶ The COE has previously considered the “one-percent rule” when evaluating special financial gain or loss.⁷ The general line drawn is where the interest of the official involves 1% or less of the class. In other words, 100 or more affected persons is a sufficiently large class to transform the benefit or loss into one shared by similarly situated members of the general public.

Here, there are only 89 units in your condominium. If the public works project would provide a benefit to your condominium only, then your interest in the benefit would be more than 2% of the class. The size of the class would be too small, and the project would result in a special financial benefit to you. As such, you would not be able to participate in the discussion and vote on the project. However, because the proposed public works project would benefit other buildings and property owners, in addition to your condominium, then the economic benefit or loss affects a class large enough so as to remove any prohibited financial benefit. Therefore, in that instance, you may participate in the discussion and vote on the matter.

FACTS:

You are the Vice Mayor of the Town. You live in a condominium in the Town called Mayan South. You are a joint owner of two of the 89 units in Mayan South, and you serve on the board of the condominium.

The Town has had a persistent flooding problem, primarily along Ocean Avenue, where you live, and along Lake Drive. While street flooding has consistently been a problem, it has become worse in recent years. Development and zoning decisions made by the Town have increased the amount of storm water sent to the storm drains along Ocean Avenue and Lake Drive. The storm water drainage system has not been updated to accommodate the increased water flow, resulting in flooding in the streets, building parking areas as well as into the buildings themselves.

The Seaspray Inn, the Marriott, and your condominium are the buildings affected along Ocean Avenue. Your condominium has had four to six inches of storm water in the lobby three times this year. The Seaspray Inn recently had two feet of water in their garage during a storm in October. The Marriott down the street had major flooding in their lot and their lobby flooded. There are also single family homes that get water on their property from street flooding or from runoff from houses that sit higher

The current Mayor and Town Commission have agreed to address the problem and have had a number of discussions at Commission meetings about how to proceed. Residents from Mayan South are among the most vocal about the flooding problem because other properties do not flood as severely or as frequently as Mayan South. Consequently, on occasion, the discussion centers on the situation at Mayan South and what to do about it, in particular. The Town Attorney has advised you to no longer participate in these discussions or vote on any motion that addresses the flooding problem affecting your building because it is a conflict of interest.

The next Commission meeting is on November 17, 2014. The Town Manager has been interviewing civil engineers to work with the Town to develop a plan, and it is likely that the Commission will be asked to vote to approve the hiring of the recommended engineer at that meeting.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a), and §2-443(c) of the Code:

⁶ RQO 12-063

⁷ RQO 14-006

Section 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Section 2-443. Prohibited conduct.


- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
 - (1) Himself or herself;

- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7). The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Steven P. Cullen,
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, *Chair*
Michael S. Kridel, *Vice Chair*
Michael F. Loffredo
Carmine A. Priore
Clevis Headley

Executive Director

Steven P. Cullen

December 4, 2014

Councilman Howard Coates, Jr.
505 South Flagler Drive, Suite 300
West Palm Beach, FL 33401

Re: RQO 14-036
Conflict of Interest

Dear Councilman Coates,

Your request for an expedited advisory opinion pursuant to Commission on Ethics (COE) Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Are you required to abstain from voting on matters involving a series of upcoming land development approvals related to the Wellington Country Place PUD project (the PUD), specifically Master Plan Amendment and Site Plan, Re-Plat and Special Use Permit applications?

ANSWER:

Based on the facts submitted, you are required to abstain from voting on and participating in the matters involving the Master Plan Amendment and Site Plan, Re-Plat and Special Use Permit applications.

The Palm Beach County Code of Ethics (the Code) prohibits you from using your official position in any way which would result in a special financial benefit to a client or customer of your outside employer.¹ Since your law firm has provided services in excess of \$10,000 over the previous 24 months to Chickering South, LLC (Chickering), Chickering is a customer or client of your law firm.² Additionally, although your law firm ended its representation of Pierwell Properties, LLC (Pierwell) in November 2014, Pierwell falls under the Code's definition of a customer or client because your law firm provided services to Pierwell in excess of \$10,000 during the previous 24-month period.

Whether the Master Plan Amendment and Site Plan, Re-Plat, and Special Use Permit applications would create a voting conflict turns on whether the financial benefit involved is shared with similarly situated members of the general public. As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.³ Therefore, the determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public turns on the size of the class of persons who stand to benefit from the measure. Where a

¹ §2-443(a)

² §2-442

³ RQO 10-013

class is large, a prohibited financial gain would result only if there are circumstances unique to you which would enable your property to benefit more than the other property owners within the class. Where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.⁴ The general line drawn by the Florida Commission on Ethics involves situations where the interest of the public official involves 1% or less of the class, in other words, 100 or more affected persons.⁵ While the "1% Rule" may be an arbitrary cut-off point, it provides certainty and guidance in an area of the law which otherwise lacks clarity.

Here, Chickering owns 5.9293 of the 250 acres affected by the Master Plan Amendment, which results in a 2.37% interest in the affected class. Pierwell owns 15.4999 acres out of the 250 acres affected, which equals a 6.20% interest in the affected class. Because the class of persons affected is small and the Master Plan Amendment would provide a unique benefit to customer or clients of your law firm, the Code prohibits you from voting on or participating in this matter. Similarly, you are prohibited from voting on and participating in the Site Plan, Re-Plat, and Special Use Permit applications. Pierwell's interest in Pod F, the area affected by the Site Plan, Re-Plat, and Special Use Permit applications, is approximately 29%. Chickering's interest in Pod F is approximately 11%. Since Pierwell and Chickering each own more than 1% of the property to be affected, the benefit to them would be considered a "special."

FACTS:

You are a Councilman on the Village of Wellington Village Council. You are also a member of the law firm, McDonald Hopkins, LLC. Another attorney at your law firm currently represents Chickering, a property owner within the PUD subject to the Master Plan Amendment, and formerly represented Pierwell, another property owner within the PUD. The representation of Pierwell ended on or about November 1, 2014. Your law firm has provided over \$10,000 in services to both Chickering and Pierwell during the previous 24 months.

A developer seeks to amend the Master Plan for the PUD. The PUD totals approximately 958 acres, but the Master Plan Amendment would only modify an area limited to approximately 250 acres. Of the 250 acres affected, the Chickering property totals 5.9293 acres and the Pierwell property totals 15.4999 acres. Pierwell and Chickering both consent to the Master Plan Amendment as affected parties.

The PUD is currently divided into several Pods and several of those Pods are further divided into several Phases. Under this Master Plan Amendment, the developer is seeking to:

- a) add three access points at various locations on the boundaries of the PUD,
- b) transfer density between two of the existing Phases within the PUD,
- c) realign the interior roadway within two of the exiting phases with the PUD, and
- d) modify the existing Condition #8 with regard to certain re-platting and roadway requirements.

As a condition of the Master Plan, the developer will also be required to re-plat Pod F. The developer has submitted a Site Plan application for Pod F, Phases V and VI, a Re-Plat application for Pod F, and a

⁴ CEO 92-37 (two percent or eight percent of the property to be affected is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

⁵ CEO 93-12 (a Trustee of a firefighter's retirement system, who was a recipient under the pension plan, was not prohibited from voting on an issue involving the handling of a pension lawsuit that could benefit himself as a member of the class action because all members of the class action were similarly situated and stood to gain in the same way regarding firefighter retirement benefits).

Special Use Permit application for on street parking. The Chickering and Pierwell properties are located entirely in Pod F, Phase VI. Pod F, Phase V has approximately 12 acres. Pod F, Phase VI has approximately 40.85 acres. The Re-Plat, Site Plan, and Special Use Permit will involve the location of bridle trails and the orientation of internal roadways, perimeter landscape buffers, future drainage lakes, and easements.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a), and §2-443(c) of the Code of Ethics:

Sec. 2-442. Definitions.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Sec. 2-443 Prohibited conduct.

(a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

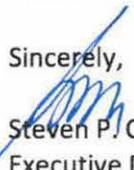
(5) A customer or client of the official or employee's outside employer or business;

(c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,


Steven P. Cullen,
Executive Director
CEK/gal

December 4, 2014

Councilman Howard Coates, Jr.
505 South Flagler Drive, Suite 300
West Palm Beach, FL 33401

Re: RQO 14-036
Conflict of Interest

Dear Councilman Coates,

Your request for an expedited advisory opinion pursuant to Commission on Ethics (COE) Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Are you required to abstain from voting on matters involving a series of upcoming land development approvals related to the Wellington Country Place PUD project (the PUD), specifically Master Plan Amendment and Site Plan, Re-Plat and Special Use Permit applications?

ANSWER:

Based on the facts submitted, you are required to abstain from voting on and participating in the matters involving the Master Plan Amendment, and the Site Plan application for Pod F, Phases V and VI, the Re-Plat application for Pod F, and any Special Use Permit applications, which involves the properties of Pierwell or Chickering.

The Palm Beach County Code of Ethics (the Code) prohibits you from using your official position in any way which would result in a special financial benefit to a client or customer of your outside employer.¹ Since your law firm has provided services in excess of \$10,000 over the previous 24 months to Chickering South, LLC (Chickering), Chickering is a customer or client of your law firm.² Additionally, although your law firm ended its representation of Pierwell Properties, LLC (Pierwell) in November 2014, Pierwell falls under the Code's definition of a customer or client because your law firm provided services to Pierwell in excess of \$10,000 during the previous 24-month period.

Whether the Master Plan Amendment and Site Plan, Re-Plat, and Special Use Permit applications would create a voting conflict turns on whether the financial benefit involved is shared with similarly situated members of the general public. As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.³ Therefore, the determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public turns on the size of the class of persons who stand to benefit from the measure. Where a

¹ §2-443(a)

² §2-442

³ RQO 10-013

class is large, a prohibited financial gain would result only if there are circumstances unique to you which would enable your property to benefit more than the other property owners within the class. Where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.⁴ The general line drawn by the Florida Commission on Ethics involves situations where the interest of the public official involves 1% or less of the class, in other words, 100 or more affected persons.⁵ While the "1% Rule" may be an arbitrary cut-off point, it provides certainty and guidance in an area of the law which otherwise lacks clarity.

Here, [the Village of Wellington staff reports states that this Master Plan Amendment will affect 250 acres of the 958 acres within the PUD.](#) Chickering owns 5.9293 of the 250 acres affected by the Master Plan Amendment, which results in a 2.37% interest in the affected class. Pierwell owns 15.4999 acres out of the 250 acres affected, which equals a 6.20% interest in the affected class. Therefore, because the class of persons affected is small and the Master Plan Amendment would provide a unique benefit to customer or clients of your law firm, the Code prohibits you from voting on or participating in this matter. Similarly, you are prohibited from voting on and participating in the Site Plan [for Pod F, Phases V and VI, the Re-Plat application for Pod F, and any Special Use Permit applications, which involves the properties of Pierwell or Chickering.](#) Based on the information submitted, Pierwell's interest in Pod F, the area affected by the Site Plan, Re-Plat, and Special Use Permit applications, is approximately 29%; Chickering's interest in Pod F is approximately 11%. Since Pierwell and Chickering each own more than 1% of the property to be affected, the benefit to them would be considered a "special."

FACTS:

You are a Councilman on the Village of Wellington Village Council. You are also a member of the law firm, McDonald Hopkins, LLC. Another attorney at your law firm currently represents Chickering, a property owner within the PUD subject to the Master Plan Amendment, and formerly represented Pierwell, another property owner within the PUD. The representation of Pierwell ended on or about November 1, 2014. Your law firm has provided over \$10,000 in services to both Chickering and Pierwell during the previous 24 months.

A developer seeks to amend the Master Plan for the PUD. The PUD totals approximately 958 acres, but the Master Plan Amendment would only modify an area limited to approximately 250 acres. Of the 250 acres affected, the Chickering property totals 5.9293 acres and the Pierwell property totals 15.4999 acres. Pierwell and Chickering both consent to the Master Plan Amendment as affected parties.

The PUD is currently divided into several Pods and several of those Pods are further divided into several Phases. Under this Master Plan Amendment, the developer is seeking to:

- a) add three access points at various locations on the boundaries of the PUD,
- b) transfer density between two of the existing Phases within the PUD,
- c) realign the interior roadway within two of the exiting phases with the PUD, and
- d) modify the existing Condition #8 with regard to certain re-platting and roadway requirements.

⁴ CEO 92-37 (two percent or eight percent of the property to be affected is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

⁵ CEO 93-12 (a Trustee of a firefighter's retirement system, who was a recipient under the pension plan, was not prohibited from voting on an issue involving the handling of a pension lawsuit that could benefit himself as a member of the class action because all members of the class action were similarly situated and stood to gain in the same way regarding firefighter retirement benefits).

As a condition of the Master Plan, the developer will also be required to re-plat Pod F. The developer has submitted a Site Plan application for Pod F, Phases V and VI, a Re-Plat application for Pod F, and a Special Use Permit application for on street parking. The Chickering and Pierwell properties are located entirely in Pod F, Phase VI. Pod F, Phase V has approximately 12 acres. Pod F, Phase VI has approximately 40.85 acres. The Re-Plat, Site Plan, and Special Use Permit will involve the location of bridle trails and the orientation of internal roadways, perimeter landscape buffers, future drainage lakes, and easements.

LEGAL BASIS:

The legal basis for this opinion is found in §2-442, §2-443(a), and §2-443(c) of the Code of Ethics:

Sec. 2-442. Definitions.

Customer or client means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Sec. 2-443 Prohibited conduct.

(a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

(5) A customer or client of the official or employee's outside employer or business;

(c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen,

Executive Director
CEK/gal

PROPOSED

December 12, 2014

Lieutenant Donald Deyo
Palm Beach County Fire Rescue, Station 28
1040 Royal Palm Beach Blvd.
Royal Palm Beach, FL 33411

Re: RQO 14-037
Contractual Relationship

Dear Lieutenant Deyo,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on December 11, 2014.

QUESTION:

May your outside business or employer, D-Dey Response Group, enter into a contract for services with Palm Beach County (County) while you are a County employee?

ANSWER:

Based on the facts submitted, your outside business or employer may not enter into a contract for services with the County unless one of the exceptions to the contractual relationship prohibition applies.

The Palm Beach County Code of Ethics (the Code) prohibits you from using your official position to gain a special financial benefit for yourself or your outside employer or business.¹ Accordingly, you are prohibited from using your position as a lieutenant with Palm Beach County Fire Rescue (PBCFR) to select D-Dey Response Group's training program over other available programs. Additionally, the Code prohibits you from entering into any contract or other transaction to provide goods or services to the public entity you serve, including any contract or transaction between your public employer and your outside employer or business.² The Code also prohibits a business of which a member of your household has at least a five percent ownership share from contracting with your public employer.³ However, the Code has several exceptions to the contractual relations prohibition which may apply to your situation.⁴

First, the Code provides an exception for contracts awarded under a system of sealed, competitive bidding, where your company is the lowest bidder.⁵ The sealed bid exception applies so long as you do not 1) participate in the determination of bid specifications, 2) use your official position to influence or persuade your public employer other than by the mere submission of the bid, and 3) file a statement with the Supervisor of Elections and the Commission on Ethics disclosing your interest in D-Dey Response Group prior to submitting the bid. Each individual bid submission must comply with all of the exception requirements listed in §2-443(e)(1).⁶ As long as your bid submission comports with these requirements, you are not prohibited from applying and accepting bids awarded under this exception to the contractual relationship prohibition.

¹ §2-443(a)

² §2-443(d)

³ RQO 11-090

⁴ §2-443(e)

⁵ §2-443(e)(1)

⁶ RQO 12-076

In addition, the Code provides a sole source exception where the outside employer or business is the sole source of the services within the County.⁷ The sole source exception applies if D-Dey Response Group is the only source of the training courses in the County and you fully disclose your interest to your public employer and the Commission on Ethics prior to the transaction. Finally, the Code provides an exception for contracts or transactions totaling less than five hundred dollars (\$500) per calendar year.⁸ Under this exception, your outside business or employer would not be prohibited from contracting with the County if the total amount of the contracts between D-Dey Response Group and the County does not exceed \$500, in the aggregate.

FACTS:

You are a Lieutenant with PBCFR. Your wife is the president of D-Dey Response Group, which is a company that conducts tactical medical training for first responders, law enforcement agencies, and civilians. You are an instructor for the company and teach courses that certify attendees in several different tactical medical courses. These courses are managed and certified by the National Association of Emergency Medical Technician. D-Dey Response Group would like to become a vendor of Palm Beach County and offer the courses at the PBCFR Herman W. Brice Training Complex.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442, §2-443(a), §2-443(d), and §2-443(e) of the Code:

Sec. 2-442. Definitions.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal, regional, local, or municipal government entity, of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses; or
- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

Sec. 2-443. Prohibited conduct.

- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
 - (1) Himself or herself;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (d) ***Contractual relationships.*** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county

⁷ §2-443(e)(4)

⁸ §2-443(e)(5)

commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public.

(e) **Exceptions and waiver.**

In addition, no official or employee shall be held in violation of subsection (d) if:

- (1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder and:
 - a. The official or employee or member of his or her household has in no way participated in the determination of the bid specifications or the determination of the lowest bidder;
 - b. The official or employee or member of his or her household has in no way used or attempted to use the official or employee's influence to persuade the agency, governmental entity or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
 - c. The official or employee, prior to or at the time of the submission of the bid, has filed a statement with the supervisor of elections and the commission on ethics, disclosing the nature of the interest in the outside employer or business submitting the bid.
- (3) The outside employer or business involved is the only source of supply within the county or municipality as applicable and there is full disclosure by the official or employee of his or her interest in the outside employer or business to the county or municipality as applicable and the ethics commission prior to the purchase, rental, sale, leasing, or other business being transacted.
- (4) The total amount of the contracts or transactions in the aggregate between the outside employer or business and the county or municipality as applicable does not exceed five hundred dollars (\$500) per calendar year.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen
Executive Director

CEK/gal

December 12, 2014

Vivian Hunter, Director of Human Resources
City of Belle Glade
110 Dr. Martin Luther King Blvd. West
Belle Glade, FL

Re: RQO 14-038
Charitable Solicitation

Dear Ms. Hunter,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on December 11, 2014.

QUESTION:

May City of Belle Glade (City) employees participate as a team in the American Cancer Society's Relay for Life of the Glades Walk for Cancer?

ANSWER:

Based upon the facts submitted, City employees may participate as a team in the event.¹ As indicated by the Commission on Ethics (COE) in RQO 11-059, the Palm Beach County Code of Ethics (Code) does not prohibit the participation of City employees in a charitable event such as the American Cancer Society's Relay for Life of the Glades Walk for Cancer, *so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited.* However, no person or entity with a current application for approval or award may be solicited. Any solicitation of vendors, lobbyists, principals or employers of lobbyists who lobby the City that are in excess of \$100 must be disclosed on a solicitation log and submitted to the COE within 30 days of the charitable event. In addition, the Code prohibits the use of on-duty municipal staff or municipal resources to be used in the solicitation of these charitable contributions. If an official or employee is a director or board member of the non-profit charitable organization, he or she is prohibited under §2-443(a) *Misuse of public office or employment*, from using their official position to give any special financial benefit to the charity. The identification of the team as employees of the City does not violate the Code in and of itself, as long as the other provisions are followed.

FACTS:

You are the Director of Human Resources for the City of Belle Glade. City employees have participated, and want to continue to do so, in the American Cancer Society's Relay for Life of the Glades Walk for Cancer. The employees raise money for this event by holding yard sales and luncheons on their own time. There is no use of employer resources. Neither the employees nor their spouses or domestic partners are officers or directors of the non-profit organization. There is no quid pro quo, special consideration or any direct or indirect special financial benefit to the employees or the person or entity being solicited. Persons or entities with a pending application for approval or award before the City are not solicited. The only "use" or connection to their employment is the identification of the team as "City of Belle Glade Employees Team PHIT 4 the CURE."

¹ RQO 11-059 provides detailed guidance on the requirements of the Code of Ethics in a similar situation.

LEGAL BASIS:

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Sec. 2-443. Prohibited conduct.

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care *will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:* (Emphasis added)

(7) A civic group, union, social, *charitable*, or religious organization, or other not for profit organization *of which he or she (or his or her spouse or domestic partner) is an officer or director.* (Emphasis added)

(b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, *to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others.....* "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties. (Emphasis added)

Sec. 2-444. Gift law.

(h) Solicitation of Contributions on Behalf of a Non-Profit Charitable Organization.

(1) Notwithstanding the prohibition on gifts as outlined in subsection 2-444(a) and (b), the solicitation of funds by a county or municipal official or employee for a non-profit charitable organization, as defined under the Internal Revenue Code, *is permissible so long as there is no quid pro quo or other special consideration, including any direct or indirect special financial benefit to the official or employee or to the person or entity being solicited.* The solicitation by an official or employee as contemplated herein, is expressly prohibited if made to any person or entity with a pending application for approval or award of any nature before the county or municipality as applicable. (Emphasis added)

(2) To promote the full and complete transparency of *any such solicitation, officials and employees shall disclose, on a form provided by the Commission on Ethics,* the name of the charitable organization, the event for which the funds were solicited, the name of any person or entity that was contacted regarding a solicitation or pledge by the official or employee, and the amount of the funds solicited or pledged if known. The form shall be completed legibly and shall be filed with the Commission on Ethics. The form shall be filed within 30 days from the occurrence of the event for which the solicitation was made, or if no event, within 30 days from the occurrence of the solicitation. (Emphasis added)

- (3) Officials and employees *may not use county or municipal staff or other county or municipal resources in the solicitation of charitable contributions* described in this subsection. (Emphasis added)

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen,
Executive Director

SPC/gal

PROPOSED