

**MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE) – INITIAL**

**CALL TO ORDER:** February 23, 2010, at 4:05 p.m., in the McEaddy Conference Room, 301 North Olive Avenue, 12<sup>th</sup> Floor, West Palm Beach, Florida.

**MEMBERS PRESENT:**

Manuel Farach, Esq., Richman Greer, P.A., appointed by the presidents of the Hispanic Bar Association of Palm Beach County, the F. Malcolm Cunningham, Sr. Bar Association, and the Palm Beach County Bar Association

Dr. Robin Fiore, Ethics Professor, Florida Atlantic University, appointed by John F. Pritchett, president, Florida Atlantic University

Ronald E. Harbison, CPA, appointed by the president of the Palm Beach Chapter of the Florida Institute of Certified Public Accountants

Bruce Reinhart, Esq., Former Assistant U.S. Attorney, appointed by the president of the Palm Beach County Association of Chiefs of Police

Edward Rodgers, Retired Circuit Judge and former City of Riviera Beach Councilman, appointed by the Board of Directors of the Palm Beach County League of Cities, Inc.

**SUPPORT STAFF AND OTHERS PRESENT:**

David Baker, Ethics/IG Implementation Committee Chair

Verdenia Baker, Deputy County Administrator

Carolyn Bell

Lenny Berger, Assistant County Attorney

Joe Bergeron, County Internal Auditor

Todd Bonlarron, Legislative Affairs Director

Ed Chase, Legislative Delegation Office Executive Director

Wayne Condry, Human Resources Department Director

Lisa DeLaRionda, Public Affairs Department Director

Joe Doucette, Office of Financial Management and Budget (OFMB), Budget Director

Dennis Gallon, Ethics/IG Implementation Committee Vice Chair

Tammy Gray, Public Affairs Department Information Specialist

Addie L. Greene, Retired County Commissioner

Carey Haughwout, Public Defender, 15<sup>th</sup> Judicial Circuit

Patty Hindle, Board of County Commissioners Agenda Coordinator

Gale Howden, Ethics/IG Implementation Committee Member

Irwin Jacobowitz, OFMB Director of Contract Development and Control

**STAFF AND OTHERS PRESENT – CONTINUED**

Mike Jones, Economic Council of Palm Beach County, Inc.,  
President/CEO  
Davette Labay, Human Resources Department Training & Organizational  
Development Coordinator  
Shannon LaRocque-Baas, Assistant County Administrator  
Dennis Lipp, County Planning Commission Member  
Michael McAuliffe, State Attorney, 15<sup>th</sup> Judicial Circuit  
Brad Merriman, Assistant County Administrator  
Robert Newmark, Ethics/IG Implementation Committee Member  
Denise Nieman, County Attorney  
Harold Ostrow, Fire Rescue Advisory Board  
Shannon Ramsey-Chessman, Clerk & Comptroller Chief Operating Officer  
Andy Reid, Sun Sentinel  
Brian Reinhart  
Jake Reinhart  
Marty Rogol, Leadership Palm Beach County Ethics Initiative Committee  
Chair  
Jess Santamaria, County Commissioner  
Fred Schiebl  
Iris Schiebl, Ethics/IG Implementation Committee Member  
Heather Shirm, Public Affairs Department Web Design Coordinator  
David Sigerson  
Angela Sims, Purchasing Department Administrative Project Coordinator  
Catherine Smith, Florida Atlantic University Graduate Student  
Jennifer Sorentrve, Palm Beach Post  
Jamie Titcomb, Palm Beach County League of Cities, Inc., Executive  
Director  
Roger Trca, Clerk & Comptroller Inspector General and Audit Director  
George Webb, County Engineer  
Robert Weisman, County Administrator  
Audrey Wolf, Facilities Development & Operations Department Director  
Leilani M. Yan, Human Resources Department Recruitment and Selection  
Manager  
Linda Federico, Deputy Clerk

**1. SWEARING IN**

Chief Judge Peter D. Blanc performed the official swearing in of Manuel (Manny) Farach, Esq., Dr. Robin Fiore, Ronald E. Harbison, CPA, Bruce Reinhart, Esq., and Judge Edward Rodgers as members of the Palm Beach County Commission on Ethics (COE/Commission).

**2. ELECTION OF CHAIR/VICE CHAIR**

**2.A. Election of Chair**

**MOTION to approve the nomination of Judge Edward Rodgers as chair of the COE. Motion by Manuel Farach, seconded by Dr. Robin Fiore, and carried 5-0.**

**2.B. Pages 3-4**

**3. INTRODUCTION – Brad Merriman and David Baker**

Assistant County Administrator Brad Merriman stated that the objective of this meeting was to talk about the history and purpose of the COE, accomplishments anticipated to result from today's discussion, and to provide an opportunity for staff to introduce themselves to the Commission members. He introduced Assistant County Attorney Leonard (Lenny) Berger, and David Baker, the chair of the Ethics/Inspector General (IG) Implementation Committee, a citizens group/advisory committee that would assist staff and the COE through the complete implementation of three ordinances. adopted by the Board of County Commissioners (BCC) in December, creating the COE, the Office of Inspector General (OIG), and the Palm Beach County Code of Ethics

(CLERK'S NOTE: For additional discussion of item 3.. see pages 3-4.)

(CLERK'S NOTE: Item 2.B. was addressed at this time.)

**2.B. Election of Vice Chair**

**MOTION to approve the nomination of Manuel Farach as Vice Chair of the COE. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 5-0.**

(CLERK'S NOTE: Discussion of item 3. resumed at this time.)

Mr. Merriman pointed out that copies of the three ordinances had been provided to the COE members and he made the following additional comments:

- Shortly after the ordinances were adopted, County staff and the citizen members of the advisory committee began the process of implementation. Senior staff in attendance today would provide details for the COE members on efforts accomplished to date for the implementation.

### 3. – CONTINUED

- Members of the Ethics/IG Implementation Committee—David Baker, Iris Scheibl, Bob Newmark, and Gail Howden—had joined the meeting today.
- Currently, County staff would provide support for the COE, but the ordinances provided for the selection and hiring of an executive director by the COE. Also, with the assistance of the state attorney and the public defender, the COE would be the selection committee for the IG.
- Currently, both positions were being advertised and information concerning those advertisements was included in the packets provided to the Commission members. The selection process, which perhaps would be the COE's most important order of business in the coming months, would be discussed in detail later in today's meeting.

### 4. INTRODUCTION OF STAFF

County staff, who had been working on issues associated with the implementation, introduced themselves as follows: Audrey Wolf, Director of Facilities Development & Operations; Joe Doucette, Budget Director; Patty Hindle, agenda coordinator; Davette Labay, training and organizational development; Wayne Condry, director of the County Human Resources Department (Human Resources); Leilani Yan, manager of recruitment and selection, Lisa DeLaRionda, director of Public Affairs; Heather Shirm, Web design coordinator for Public Affairs; Todd Bonlarron, Legislative Affairs director for the County; David Baker, chair of the Ethics/IG Implementation Committee; and Lenny Berger, Assistant County Attorney.

Mr. Merriman noted that County Administrator Robert Weisman, Commissioner Jess Santamaria, and County Attorney Denise Nieman were in the audience.

(CLERK'S NOTE: Dennis Gallon, Ethics/IG Implementation Committee vice chair, joined the meeting.)

### 5. ETHICS/SUNSHINE LAW/PUBLIC RECORDS OVERVIEW/DUTIES AND RESPONSIBILITIES – Lenny Berger

In presenting an overview of how the State's and County's Code of Ethics (Code) and the Sunshine Law applied to the Commission, and in providing details regarding the COE's duties and responsibilities, Mr. Berger stated the following:

## 5. – CONTINUED

- Since the COE would be meting out advisory opinions and penalties under the local Code, it was subject to the State's Code. Additionally, since the COE was now a public agency, it was subject to the Sunshine Law's requirements.
- The Sunshine Law required that every phase and aspect of the COE's decision-making process be done in public, including every form of discussion among the Commission members. The point of the law was to ensure that the public always had the opportunity to be present when the COE had discussions and debates.
  - It was unlawful for two or more Commission members to privately discuss or communicate in any manner (i.e., emailing, writing, Facebooking, Tweeting), on anything that would foreseeably come before the COE for approval.
  - Currently, County staff was serving as staff to the COE and could help with any questions that Commission members might have. However, communication among COE members about any matter coming before the Commission was prohibited.
  - Knowingly violating the Sunshine Law was a second-degree misdemeanor, and the consequences were a fine of up to \$500, six months of incarceration, or both.
- The State Code was included in the materials packet provided to the Commission members. The Code was designed to prevent any kind of situation where a Commission member's private life would create a conflict of interest with their public duties on the COE, primarily with regard to money. The State Code, in detail, could be found online.
- Commission members could not have any kind of contractual relationship with the COE and a business owned by the member, or with anyone who employed the member. For example: Commission members could not use their office for public gain; could not use information available only to themselves, by dint of their public position, for any sort of private gain; nor could they receive anything of value in exchange for the way they performed their duties on the COE.

## 5. – CONTINUED

- There would be training materials on the County's Code posted on the County's Web site home page, <http://www.co.palm-beach.fl.us/>, under a tab entitled Ethics/Inspector General, for use by all advisory board members. There would be a program and an outline posted online that would provide all information on the County's Code that the Commission members needed to know.
  - The most significant requirement under the local Code was following the gift law. Commission members would not be allowed to accept gifts valued over \$100 from people who lobbied the COE or its members' employers. Gifts from other individuals that were valued over \$100 would have to be reported, but this did not apply to gifts received from family members. This reporting requirement would commence on October 1, 2010.
- The COE would be working with its own executive director and staff; the selection process for the executive director of the COE would be discussed later in the meeting.
- The job of the COE was to serve as an enforcement board, and would be hearing, in an administrative setting, violations of the Code.
- The executive director and his/her staff would serve as prosecutors and as counsel to the COE.
- The COE would be rendering advisory opinions regarding how particular parts of the Code worked in specific situations.
- The COE was the entity in charge of developing, providing, and delivering training programs for County government.
- County staff intended to put this matter before the public for a vote to amend the County's charter by fall 2010, so it would at least apply in all the county municipalities as well; therefore the COE's jurisdiction would spread.

## 5. – CONTINUED

- For the duration of their service on the COE, members needed to be removed from the political world. They could not hold or campaign for any elective office or hold office in any political party or political committee, nor could they actively participate in or contribute to any political action committee or candidates. Additionally, they could not be employed by the County or any government that they, as a member of the COE, might have jurisdiction over. Furthermore, the members could not allow their name to be used in any campaign to support or oppose a candidate. However, Commission members could sign their name on petitions in support of particular referendum issues.

Stating that he preferred that the COE's discussions regarding the decision-making on the IG and the executive director selection be confidential, Mr. Farach asked how that process would take place. Mr. Berger replied that the discussions would be public.

Judge Rodgers asked if the same rule applied to advisory opinions: if someone wrote the COE for an advisory opinion, the Commission would have a public meeting to discuss the opinion. Mr. Berger replied that in the State Commission on Ethics, if a person asked for an opinion, typically staff drafted an opinion and at public hearings, the board approved it, approved it with recommendations, or sent it back to the drawing board. This process was conducted publicly.

State Attorney Michael McAuliffe interjected that the members could interact with staff persons but not with each other, and Mr. Berger noted that a staff person could not serve as a conduit.

Mr. Harbison asked how the COE would interact with the Ethics/IG Implementation Committee and whether the COE members were prohibited from speaking with that committee's members individually. Mr. Berger responded that interplay between the two entities would be public.

Judge Rodgers commented that some of the COE members were lawyers and asked how their ability to hear certain cases, or act as mediators or special masters would be affected by the Code. Mr. Berger replied that the members' judicial duties were done for a different agency and they would not be captured under these guidelines, unless they were working for County government as a special master.

**6. STATUS UPDATES**

Mr. Merriman announced that staff would present updates on what had been accomplished to date in the ordinance implementation process, and stated that if the COE wanted things done differently in the future, staff was seeking the Commission members' direction in that regard.

**6.A. Web Presence – Lisa DeLaRionda/Heather Shirm**

Public Affairs Department (Public Affairs) Director Lisa DeLaRionda outlined the department's roles and efforts made regarding the COE and the IG, as follows:

- Public Affairs was responsible for printed materials; Web site development, enhancement and updates; and videotaping and broadcasting programs on PBCTV Channel 20, the County's governmental and educational cable-based channel.
- A toll-free hotline number, 877-283-7068, had been established and posted on the County's website for reporting fraud, waste, and abuse, either anonymously or otherwise.
- Public Affairs was responsible for the County's Web site, <http://www.co.palm-beach.fl.us/>. The site consisted of over 5,000 pages and had over 4 million visitors during calendar year 2009.
- Public Affairs' Channel 20, in coordination with Human Resources and the County Attorney's Office, taped both the employees' and the County advisory boards members' ethics training videos.
- Public Affairs' Graphics Division was in the process of printing and distributing ethics informational packets for County employees and advisory board members.

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## 6.A. – CONTINUED

Public Affairs Web Design Coordinator Heather Shirm pointed out that a copy of the County's Web site home page was included in the informational packet provided to the COE members, with the Ethics/IG tab highlighted to provide a visual tool for accessing the site. She stated that everything related to ethics and the IG could be found with that tab, including but not limited to: information about the COE members' correspondence with the County and their appointments; job postings for both the IG and the executive director, dates for all upcoming meetings of the Ethics/IG Implementation Committee and of the COE as they were scheduled; meeting minutes, copies of all three ordinances related to ethics, and the ethics training materials which would be available on March 1, 2010, and all would be available to the public.

## 6.B. IG Fee/PPMs – Joe Doucette

Joe Doucette, OFMB budget director, explained that his role in the implementation process had been to work in cooperation with the County departments and with the Clerk & Comptroller's Office (Clerk) to develop the policy and procedure (PPM) to implement the IG fee which would fund the OIG. Since the adoption of the ordinance in December, staff had worked to establish the mechanics for making funding of the office workable, he said. The office would be funded by a one-quarter of one percent fee on contracts, with some exemptions as identified in the ordinance, he stated.

Mr. Doucette further explained that:

- The COE office was currently funded for the remainder of this fiscal year (FY) with a transfer from the general fund in the amount of \$180,000. As the COE moved forward in its development and hired staff, OFMB would work with them to develop their budget for FY 2011, which would begin October 1, 2010.
- All County staff involved in procurement would be trained on the implementation of the IG fee so that they would know which procurements the IG fee would be applied to. The training was scheduled for February 24, 2010, and February 26, 2010.
- In accordance with the BCC's approval today, the effective date for implementation of the IG fee for phase one would be March 2, 2010. Most contracts were included in phase one.

**6.B. – CONTINUED**

- The effective date for the second phase would be April 23, 2010, at which time the County would amend its purchasing code and the IG fee would be fully implemented.

**6.C. Lobbyist Registration – Todd Bonlarron**

Mr. Merriman pointed out that the ordinances effected many changes relative to lobbyists, and Mr. Bonlarron elaborated on requirements for lobbyist registration as follows:

- To date, the County had required that individuals lobbying the BCC or staff to register with the County. There were also contact logs at each County department's office requiring that any visitor sign the log, identify who they were visiting, the nature of the business they intended to discuss, and to indicate whether or not they were a lobbyist. Staff intended to continue maintaining the log-in form.
- The most significant changes were related to how lobbyists were registered and a fee associated with the registration. In the past, lobbyists were able to fill out just one form, sign it, and attach an addendum listing their clients. Under the new ordinance, every individual who lobbied would be required to complete a form and sign it, and the principal that they represented would also have to sign the form.
  - For example, if someone represented 25 clients, they would have to submit 25 forms signed by themselves and by the principals, along with a \$25 payment to the County attached to each form.
  - The \$25 fees collected would be deposited by the Clerk's Office into the County's general fund.
- Under the new law, registration forms would not expire; a one-time registration fee was paid for a client and that information would remain on the County's records as a lobbyist representing the entity until the lobbyist processed a withdrawal form, which removed the lobbyist from representing that client to the BCC.
- Current registrations of lobbyists with the County were scheduled to expire on December 31, 2010. However, under the new law, those registrations would expire on May 1, 2010, and everyone would be required to re-register into the new system at that time.

## 6.C. – CONTINUED

- Anyone could search every lobbyist by name as well as by principal on a page on the County's Web site. Staff was currently working with the cities to determine how to institute lobbyist registration and potential changes they made to interface with the County's system.
- On March 1, 2010, a letter was being sent to every lobbyist currently registered explaining the new rules and requirements set forth by the ordinance so that they understood that their registration would expire and that they needed to re-register.

## 6.D. IG/COE Space – Audrey Wolf

Facilities Development & Operations Department Director Audrey Wolf gave a presentation on the space that had been selected for housing the IG, the COE, and the executive director, stating the following:

- In an effort to determine the space requirements necessary for the OIG, Miami-Dade County had been contacted regarding its IG's initial staffing complement for start up and the beginning years of its operations. Using Miami-Dade County's exact number and complement, which included an IG, a deputy IG, a secretary, an analyst (which was a high-level technical position with special security requirements), two to five investigators, and an auditor, staff looked for a facility with enough space to accommodate the entire complement for the first three years without having to relocate.
- There were the following special requirements for the facilities selected:
  - For equipment and an evidence room;
  - Special security requirements for the analyst, because he/she would be responsible for specialized information protected by the Florida Department of Law Enforcement or the Federal Bureau of Investigation, criminal history checks, and personal information; and
  - Adequate filing space was necessary for investigators' active cases.

#### 6.D. – CONTINUED

- With regard to the general location of the facility, staff sought space that was not in the Governmental Center; where the entire suite could be secured from the balance of the building; that was adequate to meet the IG's needs for the first three years; that would have some public space available for holding public hearings; and, space to also house the executive director and one staff person.

Due to recent reductions, staff had located the necessary amount of space and had identified a building, which was known as the operations and support center, that met all of the requirements, Ms. Wolf reported. The facility was located at the Vista Center Complex at Jog Road and Okeechobee Boulevard, she explained, and was a mixed-use development within which the County had two developments: a four-story office building and an operations/support center.

Referring to a copy of the floor plan distributed to the COE members, Ms. Wolf pointed out that the suite identified for the OIG was immediately to the left of the main lobby where visitors were greeted by a receptionist and waited to be escorted to the appropriate suite. The suite for the IG was securable from the exterior as well as from the building through card access, she added, and could either be left open during the day or secured at all times with an escort.

Ms. Wolf explained that within the selected suite there were offices for the IG, the COE executive director, an analyst, a deputy IG and a future auditor, and a conference room. The remainder of the space would be in a workstation configuration, she said, and that was reconfigurable depending on the work style. The investigator spaces were twice as big as those the County provided for the Palm Beach County Sheriff's Office and others because of the nature of the investigators' work and documents, she stated. The large size would allow for flexibility in the future if investigators were added, because the workstations could be reduced and would still have more space than what was considered standard, she said.

Ms. Wolf stated that some build-out needed to be done at the location and that if the COE agreed with the site selection, staff wanted to proceed with the improvements prior to the IG coming onboard so that the space was ready. In response to COE members' questions, Ms. Wolf confirmed the following:

- There was space for the commissioner to review documents, and the parking facilities were adequate and accessible, with visitor parking immediately outside along the length of the building.

(CLERK'S NOTE: Further discussion and board action on item 6.D. took place later in the meeting. Please see pages 13-14.)

**6.E. Advisory Boards – Patty Hindle**

Patty Hindle, BCC agenda coordinator, explained that she maintained a centralized database of all BCC appointments to the various County boards and committees, and it was her role to ensure that advisory board and committee members were notified and trained in the County's new Code of Ethics requirements. In cooperation with the County Attorney's Office, she said, advisory boards that were covered under the new Code had been identified, and it was estimated that approximately 500 members, including those of the COE, had to be notified about accessing the new Web site page to receive their training.

Ms. Hindle stated that Mr. Berger had completed the ethics training video for advisory board members, and provided the following additional information:

- Staff intended to put the advisory board/committee member training video online, along with the Code of Ethics ordinance, a brief guide for advisory board members, and the form acknowledging that individuals had completed the training and read the ordinance.
- Advisory board and committee members would be required to print out the training completion affidavit, sign it, and send it back to Ms. Hindle for recordkeeping purposes.
- It was expected that the Web site page would be fully operational by March 1, 2010. On March 5, 2010, the massive mailing with instructions on accessing the Web site and completing the training would be sent to all advisory board members.
- Advisory board members were initially allowed two weeks to complete their training. A reminder letter would be sent to those who did not return their training completion forms, and they would be given an additional two weeks to complete the training.

(CLERK'S NOTE: Discussion of item 6.D. resumed at this time.)

**6.D. CONTINUED**

On behalf of the County Attorney, Mr. Merriman requested that, for the record, the COE vote formally on the IG/COE space selection issue.

Mr. Farach questioned what the cost would be, and Ms. Wolf replied that although staff had not yet done a cost estimate, she expected the cost to be a little less than \$75,000.

Judge Rodgers commented that the COE was voting only on staff's plan for the space and its adequacy.

Mr. Harbison asked if the \$75,000 would come from the \$180,000 being transferred from the FY 2010 general fund for the COE operations, and Mr. Doucette replied that it would not.

Mr. Farach asked whether the \$180,000 had been allocated thus far. Mr. Doucette responded that staff had not itemized the allocations, but had estimated an executive director's staff salary for six or seven months, plus benefits and some operating costs. He confirmed that the \$180,000 was primarily designated for COE operating start-up costs.

Judge Rodgers reiterated that at this point, the committee only needed a motion to approve the recommendations of staff so they could begin moving forward on the plan. Mr. Farach asked whether the spatial improvement would go through the typical County procurement process, and Ms. Wolf replied affirmatively, adding that it was a minor renovation and that one of the County's competitively-procured annual contractors would be used to complete the work.

**MOTION to approve the recommendation of staff pertaining to the space and location of the building to be occupied by the COE and the OIG. Motion by Bruce Reinhart, seconded by Manuel Farach, and carried 5-0.**

(CLERK'S NOTE: Items 6.F., 6.G., and 6.G.1. were discussed in tandem.)

**6.F. Employee Training – Wayne Condry/Leilani Yan/Davette Labay**

**6.G. IG/COE Executive Director Recruitment – Wayne Condry/Leilani Yan**

### 6.G.1. Selection Process

Human Resources Department (Human Resources/Department) Director Wayne Condry explained the two-fold role of the Department relative to the COE and the OIG as follows:

- Human Resources' first responsibility was to ensure that the County's 5,700 employees all received training in the new Code of Ethics ordinance by May 1, 2010.
  - Effective March 1, 2010, ethics training would be online and available at all employee desktops. Additionally, digital video disks (DVD) of the ethics training were being sent to all departments for employees who did not have computer access. Employees could access the training online at home from the County's Web site.
  - All County employees would receive ethics training prior to July 1, 2010.
  - All department heads would receive a letter from Mr. Condry, which would be mailed on Friday, February 26, 2010, instructing them as to how the ethics training should be conducted. Human Resources was making it the responsibility of each department head to ensure that all of their subordinates were trained.
  - Every employee would receive a hardcopy of the ordinance and would be required to acknowledge in writing that they had read, understood, and would abide by the ordinance.
- The second responsibility of Human Resources was the recruitment of the IG and of the COE executive director.
  - Both of the positions were currently being advertised, and the deadline for receipt of applications was 5:00 p.m. on Friday, February 26, 2010.
  - Human Resources was seeking guidance from the COE members regarding how they wanted the Department to assist them, if at all, in the selection process for the two positions.

### 6.G.1. – CONTINUED

As Human Resources' training and organizational development coordinator, Davette Labay stated, it was her mission to make sure that all 5,700 employees had reviewed the new Code by May 1, 2010, and that they had all signed the form which indicated the method by which they received their ethics training. She added that:

- The training video and a copy of the Code would be available to all employees as well as the public via the Internet and the County intranet. On March 1, 2010, she would be mailing packets to all departments which contained DVDs, a hardcopy of the Code for each employee, and instructions on how to access the Web site links.
- Each employee would sign a form indicating the method by which they received the ethics training and how they reviewed the Code. The forms would be sent to the Human Resources records division and would be filed in each employee's folder.

Responding to questions by COE members, Mr. Condry verified the following:

- Human Resources was sending correspondence to all department heads on Friday, February 26, 2010, advising them that effective March 1, 2010, their employees needed to start receiving their ethics training via the various methods made available to them. Human Resources hoped to have verification of each employee's training in their files by May 1, 2010.
- Human Resources was handling the applications for both the IG and the executive director of the COE. A copy of the job announcement for each position was included in the members' meeting packets.
- The recruitment process was going well; the Department had received approximately 55 applications for the IG position, and 19 for the position of Executive Director.

Mr. Merriman stated that there were several options for processing the applications received, and that staff was seeking direction from the COE members regarding the selection process that they preferred. He explained that the COE, along with the state attorney and the public defender, would be the selection committee for the IG position, while only the five members of the COE would be the selection committee for the executive director.



### 6.G.1. – CONTINUED

The means by which someone would be hired for the two positions once the deadline for applications was reached. Mr. Merriman stated, was an issue for which staff sought direction from the COE members, the state attorney and the public defender. He added that there were several methods which could be used, such as, using the job descriptions and criteria from the positions' advertisements, staff could cull the totality of applications received to a smaller group that the COE could then review to determine who should be interviewed. Another option was for the COE, the state attorney and the public defender to make determinations by reviewing all of the applications, he said.

State Attorney Michael McAuliffe proposed that there be two separate, parallel selection processes for the executive director and the IG, and explained them as follows:

- The five members of the COE would vet and pick their executive director and staff their commission.
- At the same time, a partnership of the state attorney, the public defender, and the COE members would constitute a separate body acting as the IG Selection Committee. The COE and the IG Selection Committee would have separate notices, meetings, and processes, which might run parallel to each other.
- The COE, the state attorney, and the public defender would meet as a deliberative body of seven—as the IG Selection Committee—and would develop their process, which might mirror what the five COE members decided to do in selecting the executive director. On the IG Selection Committee, COE members would not be ethics commissioners.

Mr. Merriman confirmed that both the COE and the IG Selection Committee members, and their review of the applications for the positions, were subject to the Sunshine Law. He added that for County executive level positions, a set of criteria was developed, an advertisement was placed, senior staff vetted the applications, reduced the number received to a manageable group, then presented that information to the final selection group, which would decide whether the list should be cut further, or more applications should be reviewed. He stated that the same process could be done for the COE and the IG Selection Committee if requested.

### 6.G.1. – CONTINUED

Mr. McAuliffe commented that endeavoring to have an independent individual hold the position of IG in the County had been a long, successful process and, while the process suggested by Mr. Merriman was acceptable for the County's purposes, selection of an IG presented a special circumstance. He proposed, and said he strongly advocated, that the IG Selection Committee should vet all of the applicants separately as a selection committee. Although it would require more work, he stated, it would be consistent with how the OIG office was intended to be created and formed. The IG Selection Committee had the option of appointing a subcommittee to do some of the work; instead of sitting consistently as a group of seven, he suggested, they could have a group of three which would then report back to the larger group.

Leilani M. Yan, Human Resources recruitment and selection manager, explained what had been done with regard to soliciting and advertising for both positions, as follows:

- To date, Human Resources had worked with County Administration, the County Attorney's Office, and the members seated at the time for the Ethics/IG Implementation Committee, to develop the job descriptions and advertisements to solicit applications for both positions.
- Human Resources researched other IG offices, examined current vacancies for similar jobs nationwide, and using language directly from the ordinance and the Code, finalized the advertisements.
- At the beginning of the month the advertisements were posted on 20 sources per job at the national, state and local levels. The sources included everything from major job boards such as CareerBuilder.com, to targeting professional associations like the Palm Beach County Bar Association; industry-specific groups such as the Institute for Internal Auditors; and entities with governmental membership, such as the Palm Beach County League of Cities, Inc.
- Human Resources also used multiple media, such as online career opportunity pages, newsletters, email blasts to members of professional associations, print and display advertisements, and Channel 20.

### 6.G.1. – CONTINUED

- Advertisements were strategically placed to reach out to diverse groups of job seekers; targeted women's, African American, and Hispanic professional industry groups; included sources such as the American Women's Association, certified public accountants, the National Forum for Black Administrators, and La Palma.
- Advertisements for the IG position opened February 1, 2010, and for the executive director position on February 8, 2010, and were running four and three weeks respectively.
- To date, over 50 applications had been received for the IG position, 27 from out of state; and 19 applications had been submitted for the position of executive director, seven from out of state. Approximately 30 percent within each pool had stated their minimum salary requirement. By the closing date, Human Resources expected approximately 60 applications for the IG position and 25 for the executive director position.

In the ensuing discussion, committee members' comments and questions and staffs' responses were as follows:

Mr. Farach voiced his agreement with Mr. McAuliffe's suggestion that the COE and IG Selection Committee review all applications. However, keeping in mind that the economy was tough right now and that some applicants would not meet all requirements, he suggested that the Commission and the IG Selection Committee members receive for review only applications that met all requirements.

Dr. Fiore said that she preferred that the applications be ranked as to whether or not they met the requirements, but since the COE and IG Selection Committee members did not participate in writing the job descriptions, she suggested that they might find something among the applicants that met their requirements, although it did not meet the requirements of the job descriptions. She stated that she wanted to see all of the applications, and agreed with the suggestion that Human Resources separate out those which were found to be particularly worthy.

## 6.G.1. – CONTINUED

Ms. Yan stated that she estimated that approximately ten percent of the applications received to date would be dismissed immediately as unqualified by Human Resources. She also explained that Human Resources, as yet, was unable to transmit electronic copies of the applications. Currently, she said, the applications were submitted online and on paper, and Human Resources had to print them. She stated that a scannable file could be set up so that the COE and IG Selection Committee could have access to them.

Noting that the ordinance did not include the municipalities, Judge Rodgers asked if the job descriptions for the two positions were boutique to fit individuals who might come in the future for the municipalities. Mr. Berger replied that the job descriptions required a skill set that could apply as well for a city.

Mr. Berger explained that the Code that the COE would be dealing with took effect on May 1, 2010, and that the County was endeavoring to get everything done immediately rather than waiting until the election cycle to have it effective countywide. That way, he said, the County would have an opportunity to see what worked well and what did not work before going to the voters in the fall.

Mr. Reinhart asked Mr. Baker what role his organization would have in the process, and Mr. Baker replied that they would not have any role in the selection of the IG or of the executive director of the COE. He explained that his organization's role was to work with County staff to ensure that the COE and the IG Selection Committee were given everything necessary to do their jobs.

Seeking clarification, Mr. Merriman asked if the COE's direction was to be given all of the applications, categorized by Human Resources as to whether qualifications were met or not? The COE and the IG Selection Committee verified its consensus in that direction, and Mr. McAuliffe added that the job description for each position should be in the cover communication. Mr. Merriman asked whether the same basic process would be used for selection of the executive director since both positions would be dealt with simultaneously, and the members responded affirmatively.

7. **OTHER ISSUES**

7.A.

**DISCUSSED:** Space Availability.

Judge Rodgers asked when the space would be available for use by the IG and the executive director of the COE. Ms. Wolf replied that it could be available by May 1, 2010. She explained that there were two offices that had to be constructed and the special requirements of the analyst had to be accommodated; however, if some people had to occupy the space earlier, a portion of the space could be segregated for their use.

7.B.

**DISCUSSED:** Insurance for Commission Members.

Judge Rodgers inquired about the status of the volunteer group serving on this Commission with respect to the provision of insurance under the County's insurance program, particularly for insulation from being sued.

Mr. Berger replied that the County had a PPM in place whereby the legal fees were paid for defending a Commission member in defending the performance of their job on the COE. Commission members also had a common-law right to the coverage as a public official, he added.

Mr. Berger further clarified that through the County's insurance policy, the defense bills were paid directly; however, if the attorney employed by a Commission member was unwilling to wait for payment, the member would have to front the money and would then be reimbursed by the County.

7.C.

**DISCUSSED:** Effective Date.

With regard to the timing aspect set forth by the ordinance, Mr. Baker pointed out that it aspired to achieve the appointment of the IG within 150 days of enactment of the ordinance. May 1, 2010, might be that date, he said, but there was not a firm date that the ordinance set for appointing the IG; it set a target date.

#### 7.C. – CONTINUED

Mr. Berger clarified that the firm date, according to the ordinance, was 120 days from the effective date, which would be May 1, 2010.

#### 7.D.

**DISCUSSED:** Training Outreach.

Mr. Baker commented that there had been much discussion regarding the ethics training of County employees, but the reach of the Code extended beyond those employees. The training applied to the advisory boards, he added, but it also applied to vendors and folks who did business with the County. He recommended that clarity needed to be provided regarding the intent for training those individuals in the Code.

Mr. Farach stated that according to the ordinance, ethics training was part of the function of the COE, and he said that County staff would be looking for direction from the Commission on how to proceed with that training. He recommended that discussion of this issue be postponed until the next meeting in order to allow the commissioners an opportunity to consider it further before developing a comprehensive plan for the training.

#### 7.E.

**DISCUSSED:** Participation of Constitutional Officers and Municipalities.

A discussion ensued regarding participation in the Code of Ethics, the OIG, and the COE ordinances and initiatives by the county's constitutional officers, the municipalities throughout the county, and other county entities.

Mr. Merriman clarified that when the BCC passed the three ordinances, the constitutional officers—the sheriff, the tax collector, the property appraiser, the clerk & comptroller, and the supervisor of elections could not be included in the scope of the ordinances nor could they be compelled to participate in them. If they voluntarily chose to participate they could, but none were doing so, he stated. He added that the participation of the cities depended upon whether a charter amendment was developed that asked for their participation.

## 7.E. – CONTINUED

Mr. McAuliffe explained that he was speaking in front of the Palm Beach County Health Care District, and that he had been having continuous discussions with the school board regarding joining in the ethics implementation initiative. He added that the County was committed to the ordinances and would work with the implementation group and with other entities to develop the language for a charter amendment. If the charter amendment passed by a majority of voters in any municipality, he said, then the COE's authority would extend to those municipalities.

Mr. Baker clarified that the Ethics/IG Implementation Committee was not dealing with the charter amendment. A group called the Palm Beach County Ethics Initiative would continue to work with the County on the charter language, which would be developed separately, he explained.

Mr. Berger explained that the County's charter was synonymous with its constitution; it was adopted by the people. State law, he said, allowed for a county, in its charter, to mandate when a county ordinance could apply to a municipality. In the ordinances adopted by the BCC, he continued, there were provisions for the COE and the IG to negotiate interlocal agreements requiring those entities to fall under their jurisdiction.

Mr. Harbison requested clarification as to what and who currently fell under the COE's scope of authority. Mr. Berger replied that only Palm Beach County government was under the jurisdiction of the ordinances and the COE. Mr. McAuliffe further clarified that only elected officials, employees, advisory board members and vendors of the BCC were included.

## 7.F.

**DISCUSSED:** Lobbyist Identification.

Mr. Farach asked how a lobbyist was defined by County government. Mr. Berger replied that a lobbyist was someone who was paid to convince government to do something. He pointed out that lobbyists were required to register in Palm Beach County, and that they were cross-indexed by lobbyist and principal, in alphabetical and chronological order, in a directory found on the County's Web site. <http://www.co.palm-beach.fl.us/>.

7.G.

**DISCUSSED:** Contact with Applicants.

Mr. Farach asked how and to whom a COE member disclosed if they were contacted by an applicant for the executive director or IG position. Mr. Berger replied that the COE should discuss the issue and establish its policy, and suggested that the Commission should follow the spirit of a law referred to as the cone of silence. That law, he explained, prohibited any vendor in a selection process from communicating verbally with anyone with decision-making authority, such as the five members of the COE.

Mr. Berger recommended that in the event a member received a letter from or regarding an applicant, the correspondence should be made part of the public record at the next COE meeting. Regarding applicants contacting Commission members via telephone, he added, it was the COE members' prerogative to establish a policy mandating that its members be required to decline such conversations.

**MOTION to approve adoption of a policy that prohibited any sort of verbal or private contact among or from applicants to any member on the IG Selection Committee. Motion by Public Defender and IG Selection Committee member Carey Haughwout, and seconded by Manuel Farach.**

In the ensuing discussion, the following comments and suggestions were made:

- Judge Rodgers suggested that once a verbal conversation began, it should be made known to everyone on the COE.
- Ms. Haughwout recommended that every effort should be made to discourage conversations with or about the applicants, and to make it clear that it was the COE's policy that the members would not engage in those conversations. If members were contacted before that message was made known, conversations should then be disclosed, she stated.
- Judge Rodgers directed Human Resources staff, when sending out any correspondence to the applicants, to advise them that it was a policy decision that members of the COE were not to be contacted.



## 7.G. – CONTINUED

- Mr. McAuliffe recommended that the COE either prioritize vetting the executive director position because it would provide them a staff person, or ask the County to designate an administrative support person as a short-term point of contact. Then, he said, the seven members of the IG Selection Committee would follow the COE's lead, but on a separate track. When the COE designated its next meeting, he further suggested, perhaps the IG Selection Committee would piggyback on it and have a separately noticed meeting to reach a collective decision about the timeframe and vetting process. Selection of the executive director might be accomplished in a shorter turnaround time than that of the IG, he added.

**AMENDED MOTION to approve adopting a policy that prohibited any member of the IG Selection Committee (Committee) from communicating with applicants or on behalf of applicants, either verbally or in writing; and, if communication took place without the member being able to stop it, it would be fully disclosed to the entire Committee. Motion by Carey Haughwout, seconded by Manuel Farach, and carried unanimously.**

(CLERK'S NOTE: The public defender and the state attorney participated in the motions.)

**MOTION to approve adopting a policy that prohibited any member of the COE from communicating with applicants or on behalf of applicants, either verbally or in writing; and, if communication took place without the member being able to stop it, it would be fully disclosed to the entire Commission. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried unanimously.**

## 8. COMMISSION COMMENTS

### 8.A.

**DISCUSSED:** Selection Process.

Mr. Reinhart stated that he needed more guidance on how to vet the executive director applicants because the Commission members would receive the applications for review but could not talk with each other about them. He suggested that the COE discuss today what they would look for in the applications and what they would bring back to talk about when they met again.

## 8.A. – CONTINUED

Mr. Harbison agreed that the mechanics of the selection process were awkward and that because of the importance of the issue, the COE needed to spend as much time as necessary to properly vet both of the positions.

Dr. Fiore suggested that the COE members discuss among themselves the manner by which they would be able to recognize with confidence that an applicant met the criteria for independence.

Mr. Merriman explained that there would be at least two parts to the selection process. Part one would be selecting a short list of people the COE could interview, he said, and the second part would be the actual interview, both of which would have to be done publicly. To that end, he recommended the following process:

- When the members had received the applications, the number of candidates to rank as the top candidates should be decided upon; i.e., the top ten candidates or whatever number the committee chose.
- Having received a number of applications for review, which would be separated by whether or not the applicant was qualified for the position, (and there may be a large number that were qualified), the committee would pick the pre-defined number of top candidates.
- When the committee met again, there would be an open discussion and the members would arrive at a consensus for the number of applicants that they wanted to interview.
- The same process should be used for selection of the executive director, but with only the five COE members participating in that selection.

Mr. Condry offered to assemble a checklist of issues relevant to the way the jobs were advertised, because most of what was in the job description was in the ordinances. Human Resources, when posting the jobs, he explained, tried to ensure that applicants knew what their job duties and responsibilities would be and what was expected of the position incumbent. Judge Rodgers stated that what Mr. Condry offered to do would be helpful.

## 8.A. – CONTINUED

Dr. Fiore stated that she would like to know if someone had been employed by the County or an entity subject to this authority, because she might not be able to tell from the material received since she was not familiar with which entities were or were not. She stated that there were some hard criteria, so the COE members should be able to sort them in or out, but beyond that, she did not believe the members could rank the applicants.

## 8.B.

**DISCUSSED:** Discussions with Staff.

Mr. Harbison, seeking clarification, asked if he was prohibited from discussing questions he had about an applicant with County staff. Mr. Condry verified that he was not.

## 9. FUTURE MEETING SCHEDULE

A discussion ensued regarding future COE meeting dates, and Mr. Merriman identified Tammy Gray, Public Affairs information specialist, as the staff person who would coordinate the meetings. The following determinations were made:

- The next meeting would be at the same location because the new quarters would not yet be ready.
- For traffic and parking reasons, meetings would be held in the late afternoon.
- Tuesdays, Thursdays and Fridays posed no scheduling conflicts for Commission members.
- The consensus of the members was that 4:00 p.m. was a good time for the meetings.

Ms. DeLaRionda pointed out that contact information for County staff members was included in the *Guide to Services* booklet included in the meeting backup materials, and was also available as the Little Black Book on the County's Web site. Mr. Merriman added that contact information would be sent to all COE members via email.

**9. -- CONTINUED**

It was the consensus of the Commission members that the next meeting would be held at 4:00 p.m. on March 18, 2010.

Ms. Haughwout asked if all of the applications for the IG position as well as those for the executive director position would be reviewed at the next meeting, and remarked that that was a lot to do in one meeting.

Mr. McAuliffe pointed out that the COE's executive director would give the COE the ability to have administrative identities. He added that May 1, 2010, was the goal date for hiring the IG, and stated that his recommendation was to select the COE executive director first.

Mr. Reinhart summarized that the meeting on March 18, 2010, would be set as a meeting of the Ethics Commission and not as a meeting of the IG Selection Committee.

It was the consensus of the COE, the state attorney, and the public defender to tentatively schedule the meeting for selection of the IG on Thursday, March 25, 2010. Ms. Gray said that she would tentatively schedule the meeting for that date and notify the IG Selection Committee via email.

**10. ADJOURNMENT**

**At 5:29 p.m., the Chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair