

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS

I. **CALL TO ORDER:** May 27, 2010, at 1:35 p.m., in the McEaddy Conference Room, 12th Floor, Governmental Center, West Palm Beach, Florida.

II. **ROLL CALL**

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Dr. Robin Fiore - Absent
Ronald E. Harbison
Bruce Reinhart, Esq.

STAFF AND OTHERS PRESENT:

David Baker, Esq., Office of Inspector General Implementation Committee Member
Leonard (Lenny) W. Berger, Assistant County Attorney
Ernest (Ernie) Chasseur, Assistant County Attorney
Lisa De La Rionda, Public Affairs Director
Tammy L. Gray, Public Affairs Department Information Specialist
Alan Johnson, Commission on Ethics Executive Director
Brad Merriman, Assistant County Administrator
Heather C. Shirm, Public Affairs Department Web Design Coordinator
Sheryl Steckler, Inspector General candidate
Leilani M. Yan, Human Resources Department Recruitment and Selection Manager
Barbara Strickland, Deputy Clerk

III. **INSPECTOR GENERAL (IG) EMPLOYMENT CONTRACT (COUNTY STAFF AND SHERYL STECKLER)**

In introducing Assistant County Attorney Ernie Chasseur and Sheryl Steckler, the selected IG candidate, Assistant County Administrator Brad Merriman stated that the County Attorney's Office would assist with the employment contract negotiations between Ms. Steckler and the Board of County Commissioners (board).

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III. - CONTINUED

Mr. Chasseur reported that County Attorney Denise Nieman had initiated contract discussions with Ms. Steckler. He said that the chief provisions included four years with an annual salary of \$150,000, plus a deferred compensation contribution that was 50 percent of the maximum allowed by law, or \$8,250; and a car allowance of \$500 per month, plus a standard benefits package.

Ms. Steckler stated that a full work week in West Palm Beach with no telecommuting was planned. She said that family visits at personal expense would occur on weekends either locally or in Tallahassee whenever the work schedule allowed. And, she added, a local family home purchase was underway.

Mr. Chasseur commented that the employment contract contained termination procedures in the event of default by either party. Mr. Merriman said that today's contract ratification would become a June 8, 2010, agenda item for board consideration.

MOTION to ratify Sheryl Steckler's employment contract. Motion by Bruce Reinhart, seconded by Ronald Harbison, and carried 4-0. Dr. Robin Fiore absent.

IV. EXECUTIVE DIRECTOR UPDATE (ALAN JOHNSON)

Commission on Ethics (COE) Executive Director (ED) Alan Johnson, who gave a progress report on the COE's startup program, stated that:

- Office space was adequate, and all COE members were invited to visit.
- A program initiated through the Legal Aid Society would attract volunteer attorney advocates to develop cases for presentation to the board on matters of probable cause findings and final hearings, while working under the supervision of the ED and the COE.
- The Legal Aid Society would be requested to recommend a legal advisor who was qualified to confer on legal issues with Mr. Johnson and the volunteers.
- Miami-Dade County advocates would join Mr. Johnson to conduct a local attorney training session.

IV. - CONTINUED

- An intern program for college and high school student volunteers to develop computer databases would be created.
- Training and speaking requests were scheduled for the ED, for Assistant County Attorney Leonard (Lenny) W. Berger, and for Mr. Merriman during the ethics training transition.
- A COE Web site design was in progress.
- Logo designs for printed items were received from the graphics and printing division of the public affairs department for COE comments and suggestions.
- A cost analysis and line item budget calculations were under evaluation for the establishment of an independent computer server for the COE.
- Drafted protocols, policies, and procedures had been prepared for the COE's direction.
- A workshop was recommended for discussion of policies, procedures, and specific early issues, before advisory opinions were written and submitted.
 - Case law codes that affected a person's substantive rights were not retroactive, meaning that no emergency situation existed that involved resignations due to potentially unethical contractual relationships between County entities and employees, or County appointees to boards.
 - The COE would discuss a State conflicts law provision that a County employee was not allowed to work for an outside entity or own an outside entity that dealt with the County employee's department.

Manuel Farach stated that monthly COE meetings and workshops should be scheduled now in preparation for actual public hearings.

Mr. Johnson stated that:

IV. – CONTINUED

- Hearings that resulted from advisory opinion requests should be regarded as opportunities to offer interpretation and advice rather than as adversarial proceedings.
- County Administrator Robert Weisman had requested advisory opinions regarding four vendors who conducted business with the County and who were hired by the County as vendors, advisors, or contract workers.
- Witnesses would be called to appear at hearings regarding County vendor relationships.

Judge Edward Rodgers stated that an official adoption of policies and procedures was needed to establish the ED's authority to proceed. Mr. Johnson responded that he was prepared today to answer questions and to make any requested changes to the draft for advisory opinions that was before them.

In the event that the COE discovered that changes in methods or portions of the adopted draft were needed later, Mr. Johnson stated that the bylaws would function as COE procedure, and the COE could change policies and procedures at any time.

Judge Rodgers said that:

- Concerning a section titled Intake, he advised proceeding with caution in limiting the number of days for COE response.
- Section A language, "will review everything within two days of receipt," should be changed to, "as soon as possible," or similar wording.
- He recommended that expansion room be created in the event of future litigation.

Mr. Johnson responded that the purpose of Section A was to indicate that items would be reviewed by the COE in expedited fashion. Time was needed for research and for any necessary presentation to the COE, he added.

Judge Rodgers stated that he thought the language in Section B was good. He said that a written acknowledgement within five days of receipt of a complaint would reassure the entity that submitted the complaint.

IV. – CONTINUED

Mr. Reinhart commented that responses should not be limited to U.S. Mail, because other communications means, such as e-mails, faxes, or personal pickups would constitute adequate notice of receipt to document responses. He suggested the wording, "a written acknowledgement will be sent promptly."

Mr. Johnson stated that he would remove the language, "by U.S. Mail," and leave, "written acknowledgement."

Mr. Farach recommended that a Roman numeral V. be added to language in Section C, "for some form of publication of the inquiry into the response to the Commission on Ethics as well as the public." He said that the language applied to responses made by Mr. Johnson to complaints that were clearly out of the COE's jurisdiction and were made without prior knowledge of the COE.

Mr. Reinhart said that the language, "thirty days" should be deleted from Sections II.E. and III.E. and the language, "they will be processed" and "unless otherwise" should be substituted.

Mr. Johnson stated that:

- Non-jurisdictional responses could be directly answered by the Code of Ethics' (Code) language within an estimated 30 days.
- A board request for additional funding would be made if numerous requests for opinions occurred.
- Most advisory opinions would be determined by the ED in consultation with the chair or vice chair.

Judge Rodgers stated that Section F, Number VI., should add the language, "or vice chairperson," since two signatures were required.

Mr. Reinhart suggested that the language, "in the event that the chair is not available, the vice chair can fulfill the duties as required" also be added.

Mr. Johnson stated that an item E. could be added to Section I., Form Requirements, and the language, "chair or vice chair can make decisions as put forth in the policies and procedures." Mr. Reinhart suggested that a Roman numeral VIII. be added as a freestanding paragraph instead.

IV. – CONTINUED

MOTION to approve the COE Rules of Procedure interim draft as amended, including any future changes. Motion by Bruce Reinhart.

(CLERK'S NOTE: Motion was seconded later in the discussion.)

Mr. Reinhart stated that the word, "interim," was included in the motion because additional changes were anticipated. Judge Rodgers confirmed that changes could be made to the working document.

MOTION SECONDED by Manuel Farach, and carried 4-0. Dr. Robin Fiore absent.

Mr. Johnson requested adequate time to develop all the policies and procedures and bylaws before the workshop was scheduled.

Members agreed to meet on June 8, 2010, at 1:30 p.m. Mr. Johnson said that the drafted policies and procedures and bylaws would be available for members on the Friday prior to the meeting. He added that:

- Representatives from the County's facilities and real estate departments would be present to discuss the persons they contracted with as advisors.
- Representatives were expected to give statements regarding the details surrounding the existing contracts, and to answer questions from COE members.
- Facilities Development and Operations Director Audrey Wolf had been advised to do due diligence and be prepared to provide information about County contracts.
- Policies and procedures and some of the interpretations of the Code would be discussed during the workshop session.
- Telephonic capability would be available for COE members who were unable to attend the meeting in person.

Mr. Berger commented that a quorum of three was required to be present in person.

IV. – CONTINUED

Mr. Johnson commented that although no complaints had been received to date, a position had been budgeted for someone to perform a combination of roles as investigator, analyst, and paralegal. He said that he estimated the Request for Qualifications process would require approximately six weeks to identify the qualified candidate.

Mr. Merriman stated that the *Palm Beach Post* printed the County's weekly meetings schedule each Monday and that COE meetings would continue to be posted on the County's Web site.

Mr. Johnson said that:

- He intended to create a format for ethics programming on the County's PBC Channel 20.
- Public service announcements and news releases would be issued once the basic procedures were firmly established.
- Speaking engagements were already on the calendar, and an office intern assembled a list of civic organizations to contact for outreach efforts.

V. COMMISSION COMMENTS

V.A.

DISCUSSED: Ethics Program Promotion.

Judge Rodgers stated that the COE was responsible for promoting its efforts within the community to create public awareness. He recommended that a representative of the County's legislative delegation provide an update to the COE concerning current ethics legislation.

V.B.

DISCUSSED: Speaking Engagements.

Mr. Farach stated that COE members were unprepared to answer audience questions at speaking engagements regarding the ED's adjudicatory capacity. He recommended that those questions be referred to Mr. Johnson for reply.

VI. STAFF COMMENTS

VI.A.

DISCUSSED: Charter Amendment.

Mr. Merriman stated that a charter amendment that would take elements of the Code ordinance, and embed them into the County charter, and extend the Code's scope to the municipalities as well, had progressed toward placement on the November 2, 2010, ballot.

Mr. Merriman said that board approval of the ballot language was anticipated to be granted.

David Baker, Esq., County Ethics/Office of Inspector General (IG) Implementation Committee Chair, commented that:

- Primary, substantive issues of the charter amendment (amendment) consisted of fiscal contributions from the City of West Palm Beach, other area municipalities, and the County for costs associated with the implementation of the Code, as well as the breadth of the ordinance that mandated which organizations would be subject to it.
- The League of Cities was cooperating with County efforts to include cities on the ballot as subject to the ordinance. If residents voted in their municipalities to be subject to the ordinance, or if they voted in favor of the charter amendment by a majority in that municipality, they would become subject to it.
- Practical issues consisted of summarizing the amendment to a 75-word maximum allowed by the ballot requirement and the provision of a steady stream of funding that could not be undermined by a sitting board.
- The Code ordinance requirement of a .25 percent assessment on each County contract and on other entities mandated to be participants was unlikely to generate sufficient revenue to maintain the Office of IG.
- Budget deficits could possibly be covered by a portion of County general revenue funds or from recoveries of money that the IG determined was payable to the County as Miami-Dade County had accomplished.

VI.A. – CONTINUED

Mr. Merriman stated that some of the County's 38 municipalities were so small that if they were covered by the services of the COE and the IG, their contracts would generate small amounts. Funding flexibility should be incorporated into the amendment's language, he said, so that interlocal agreements would not be limited exclusively to the .25 percent in cases where the monetary result would be nearly zero.

Mr. Berger reported that pending State laws would increase penalties and fines to the equivalent of a first degree misdemeanor, and also enable local governments with ethics systems in place to have certain exceptions from the public records law and the Sunshine Law up to a determination of probable cause.

VII. IMPLEMENTATION ADVISORY COMMITTEE AND PUBLIC COMMENTS

Mr. Baker commented that:

- The IG selection process had been conducted efficiently and smoothly.
- He complimented participants for accomplishing tasks in full public view.
- The County Ethics/Office of IG Implementation Committee would continue to oversee the process through changes to the County's computer system, and through the ballot on the charter amendment in November.
- The effects of advisory ethics opinions were not specified in the guidelines as to whether they were binding on the COE for the person seeking advice and advisory for others, or whether they were not binding on anyone but advisory only for those who read the opinions.

Judge Rodgers responded that once an opinion was met by the court system, it then became a legal opinion. Until then, he continued, ethics hearings collected evidence from one side only and did not represent a full hearing.

Mr. Reinhart commented that advisory opinions offered comfort that whatever conduct people were about to engage in was grounded and protected.

VII. - CONTINUED

Mr. Farach stated that he agreed with Judge Rodgers that an advisory opinion was advisory only and not binding on those who appeared because hearings would be quasi-judicial only.

Mr. Berger remarked that information would not be given under oath, and that it was not subject to cross-examination.

Mr. Johnson stated that:

- Advisory opinions did not carry any sanctions or other enforcement component.
- COE opinions were based on the information it was given.
- Complaints would be vetted in a due-process hearing when probable cause was found.
- Civil sanctions could be imposed if a violation of the Code was found.
- Collections of fines would be accomplished through the Office of the Clerk & Comptroller.

VIII. ADJOURNMENT

At 3:20 p.m., the Chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair