

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

**MARCH 1, 2012**

**WEDNESDAY  
1:30 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

(CLERK'S NOTE: At 1:15 p.m., Judge Peter Evans led a swearing-in ceremony for the reappointment of Manuel Farach, and the appointment of Daniel T. Galo to the commission. Judge Edward Rodgers announced that Commissioner Farach was reappointed for a second term and that Commissioner Galo was appointed by the Palm Beach County Police Chiefs Association.)

**I. CALL TO ORDER**

**II. ROLL CALL**

**MEMBERS:**

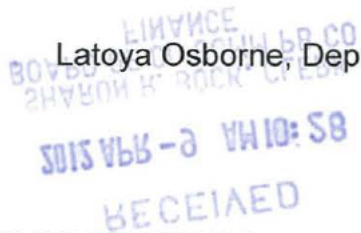
Judge Edward Rodgers, Chair  
Manuel Farach, Esq., Vice Chair  
Robin N. Fiore, Ph.D.  
Daniel T. Galo, Esq.  
Ronald E. Harbison, CPA

**STAFF:**

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator  
Alan S. Johnson, Esq., COE Executive Director  
Gina A. Levesque, COE Executive Assistant  
James A. Poag, COE Investigator  
Megan C. Rogers, Esq., COE Staff Counsel

**ADMINISTRATIVE STAFF:**

Latoya Osborne, Deputy Clerk, Clerk & Comptroller's Office



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

#### **IV. INTRODUCTORY REMARKS**

Judge Edward Rodgers announced that fire alarm testing could take place at some point during the meeting. He asked anyone wishing to speak to submit a public comment card with the agenda item included. All public comments would be limited to three minutes and should be relevant to items on the agenda, he added.

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

#### **XIII. PUBLIC COMMENTS**

##### **XIII.a.**

**DISCUSSED:** Property Tax Increase.

B. Rezmick stated that after he had been unfairly charged 14.75 percent interest on his property taxes, he later found out that his property was in foreclosure. He said that he had not been able to get any assistance from County staff to resolve the issue.

Judge Rodgers informed Mr. Rezmick that he should speak with staff in the Tax Collector's Office to resolve his tax-related issue.

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

#### **III. ELECTION OF CHAIR AND VICE CHAIR FOR NEW TERM**

**MOTION to nominate Manuel Farach as chair of the Commission on Ethics. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Manuel Farach abstained.**

**MOTION to nominate Judge Edward Rodgers as vice chair of the Commission on Ethics. Motion by Robin Fiore.**

Judge Rodgers stated that he would respectfully decline the nomination as he did not have a full four years remaining in his term on the Commission on Ethics (COE).

### **III. – CONTINUED**

**MOTION to nominate Robin Fiore as vice chair of the Commission on Ethics.  
Motion by Daniel Galo, seconded by Manuel Farach, and carried 5-0.**

(CLERK'S NOTE: Manuel Farach assumed his position as chair.)

Alan S. Johnson, Esq., COE executive director, recommended that approval of the minutes be postponed until after the executive session. He said that no Sunshine Law requirement existed related to a specific start time of the executive session since it was not a publicly advertised meeting. He added that the executive session would be recorded with audio available to anyone who requested a copy.

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**V. Page 7**

### **RECESS**

**At 1:38 p.m., the chair declared the meeting recessed for an executive session.**

### **RECONVENE**

**At 5:13 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Daniel Galo, Ronald Harbison, and Judge Edward Rodgers present.**

### **VI. EXECUTIVE SESSION**

**VI.a. C11-026 – Not discussed**

**VI.b. C11-027**

Commissioner Robin Fiore read the public report and finding of probable cause in summary as follows:

Complainant, Carole Coleman, filed the above-referenced complaint on December 21, 2011, alleging a possible ethics violation involving respondent, Dr. Scott Swerdlin, Chairman of the Wellington Equestrian Preserve Committee (EPC). The complaint alleges three Code of Ethics violations involving a meeting of the EPC on December 14, 2011.

## **VI.b. – CONTINUED**

Count 1 alleges that respondent misused his official position by participating in a matter before the EPC that would result in a special financial benefit to his customer or client, Equestrian Sports Production and/or Mr. Mark Bellissimo, applicant for the Equestrian Village Project, before the EPC for an advisory vote prior to consideration by the Village of Wellington Council. Respondent disputes this allegation.

Count 2 alleges that respondent corruptly attempted to secure a special privilege, benefit, or exemption for himself or his customer or client, Equestrian Sports Production and/or Mark Bellissimo, with wrongful intent, in a manner inconsistent with the proper performance of Respondent's public duties. Respondent disputes this allegation.

Count 3 alleges the respondent, after having been admonished by the Village of Wellington Attorney that a conflict of interest under the Code of Ethics requires abstention from both voting and participating in the matter before the EPC, did significantly participate prior to ultimately abstaining from the voting in the matter. In addition, after abstaining, respondent allegedly failed to file a state conflict of interest Form 8B as required under the Code of Ethics. Respondent disputes this allegation.

Pursuant to Chapter 8, Article XIII, Section 2-443(a), Misuse of public office of employment prohibits a public official or employee from using their official position to take any action, or to influence others to take any action, in a manner which he or she knows or should know will result in a special financial benefit not shared by members of the general public for any person or entity listed in Section 2-443(a)(1-7), including him or herself, an outside business or employer, or a customer or client of their outside business or employer.

## **VI.b. – CONTINUED**

Article XIII, Section 2-443(b), Corrupt misuse of official position prohibits any official or employee from using 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. For the purposes of this subsection, 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.

Pursuant to Chapter 8, Article XIII, Section 2-443(c), an official shall abstain from voting and not participate in any matter that will result in a special financial benefit for him or herself, an outside business or employer, or customer or client of his or her outside business or employer. A customer or client is an entity to which the official's outside business or employer has provided goods or services in excess of \$10,000 in the aggregate during the 24 months preceding the official action taken. The official must not only publicly disclose the nature of the conflict when abstaining, but must also file a conflict of interest Form 8B pursuant to the requirements of Chapter 112.3143, Florida Statutes, and submit a copy to the Commission on Ethics.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a) of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the County Code of Ethics.

On January 10, 2012, the complaint was determined by staff to be legally sufficient. The matter had been brought to the attention of the COE staff by a formal complainant, and pursuant to the Commission on Ethics Rule of Procedure 4.1.3 a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a legally sufficient finding, a memorandum of legal sufficiency was filed, and a preliminary investigation commenced pursuant to Article V, Division 8, Section 2-260(d).

## **VI.b. – CONTINUED**

Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on March 1, 2012, with a recommendation that probable cause exists that a Code of Ethics violation occurred. At that time, the commission conducted a probable cause hearing in executive session. The commission reviewed and considered the investigative report, documentary submissions, recommendation of staff, written response of the respondent, as well as oral statements of the respondent and the advocate. At the conclusion of the hearing, the Commission on Ethics determined that there are reasonably trustworthy facts and circumstances for the Commission on Ethics to believe that the respondent may have violated Sections 2-443(a), (b), and (c) of the Palm Beach County Code of Ethics, and a final hearing will be set in order to determine whether a violation or violations occurred.

Therefore, it is ordered and adjudged that probable cause exists, and the complaint against respondent, Dr. Scott Swerdlin, is hereby set for final hearing on June 15, 2012. Done and ordered by the Palm Beach County Commission on Ethics in public session on March 1, 2012. Signed Manuel Farach, Chair.

## **VI.c. C11-028**

Commissioner Fiore read the public report and final order of dismissal as follows:

Complainant, Carole Coleman, filed the above-referenced complaint on December 21, 2011, alleging a possible ethics violation involving respondent, Jeffrey Kurtz, Attorney for the Village of Wellington.

The complaint alleges Dr. Scott Swerdlin, Chairman of the Wellington Equestrian Preserve Committee, participated in a matter before the committee for which Dr. Swerdlin had a financial conflict of interest, and Mr. Kurtz failed to take action sufficient to prevent that participation.

## **VI.c. – CONTINUED**

On January 30, 2012, after reviewing the recorded Equestrian Preserve Committee proceedings forming the basis of the complaint, the complaint was determined by staff to be legally insufficient, and presented to the Commission on Ethics on March 1, 2012, with a recommendation of dismissal as legally insufficient.

The Commission on Ethics reviewed the memorandum of inquiry and determined that the actions taken by the respondent, Jeffrey Kurtz, do not constitute a violation of the Code of Ethics and dismissed the complaint on March 1, 2012, due to no legal sufficiency.

Therefore, it is ordered and adjudged that the complaint against respondent, Jeffrey Kurtz, is hereby dismissed. Done and ordered by the Palm Beach County Commission on Ethics in public session on March 1, 2012. Signed Manuel Farach, Chair.

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

## **V. APPROVAL OF MINUTES FROM FEBRUARY 2, 2012**

Commissioner Farach stated that on page 8 of the February 2, 2012, meeting minutes, the third bullet should read, "Gold Coast Builder's Association."

**MOTION to approve the minutes as amended. Motion by Judge Edward Rodgers, seconded by Ronald Harbison, and carried 5-0.**

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

## **VII. PRESENTATION OF 2011 ANNUAL REPORT**

Mr. Johnson said that although the annual report had been published, the presentation could be tabled until the April 2012 COE meeting and the commissioners agreed.

**VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

(CLERK'S NOTE: Item VIII.b. was taken before item VIII.a.)

**VIII.b. Request for Advisory Opinions (RQO) 12-011**

Mr. Johnson stated that staff had received additional information regarding RQO 12-011, which changed the result of the opinion. He requested removing from the consent agenda and resubmitting it for discussion at the April 2012 COE meeting.

**MOTION to remove RQO 12-011 from the consent agenda and to postpone discussion on the item until the April 2012 Commission on Ethics meeting. Motion by Judge Edward Rodgers, seconded by Ronald Harbison, and carried 5-0.**

**VIII.a. RQO 12-007**

Mr. Johnson said that synopses were unnecessary for consent agenda items.

**MOTION to approve the consent agenda. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 5-0.**

**IX. ITEMS PULLED FROM THE CONSENT AGENDA – None**

**X. PROPOSED ADVISORY OPINION**

**X.a. RQO 11-118**

Mr. Johnson stated that:

- Assistant County Attorney Leonard Berger had asked whether the contingent fee prohibition of the Code of Ethics (Code) applied in bond underwriting matters to investment or financial advisors; underwriters; investment banks; credit enhancers; sureties, bond, underwriter or issuer's counsel; bank or disclosure counsel; title insurers or ratings agencies where the normal and customary compensation for these services were contingent on an action or decision of government.



## X.a. – CONTINUED

- Staff had submitted the following for COE approval:
  - When acting in the normal course of his or her profession, certain financial-services professionals were not prohibited from contractual arrangements or compensation contingent on the closing of the subject transaction.
  - The arrangement was ordinary and customary in the bond underwriting business.
  - The bond-underwriting professionals were regulated by State and federal law, and compensation paid under a similar contract came from the financed funds.

Mr. Berger said that:

- The contingent fee prohibition and the language in the Code came from State law.
- At one point, there were success fees or unstated arrangements between lobbyists and clients, for example, to pay an additional amount for completed work with an unspoken understanding that the money would be directed to the decision makers.
- Exemptions existed in industries such as real estate, bond underwriting, and certain types of sales where it was customary to receive compensation at the time of closing.
- The bond underwriter-selection process was currently formalized in response to a recently published grand jury report.
- The Code's contingent fee-prohibition language did not state all exceptions as it was not intended to be an exhaustive list.

**MOTION to approve the proposed advisory opinion letter RQO 11-118. Motion by Daniel Galo, seconded by Judge Edward Rodgers, and carried 5-0.**

**X.b. RQO 11-121**

Mr. Johnson stated that:

- City of West Palm Beach (City) Ethics Officer Norman Ostrau had asked whether procedures that were in place regarding solicitation of vendor donations for the City-sponsored Fourth of July event, which included a VIP tent area not open to the public, was in compliance with the revised Code effective June 1, 2011.
- The separate VIP tent area had been created for exclusive use by City officials, employees, and their invited guests. Tickets to the VIP tent area had a \$50 face value and were distributed to City officials and employees, but were not made available to the public.
- In-kind donations, which included food and beverages, were solicited from city vendors by City employees for the VIP tent area.
- For the 2011 event, approximately 700 tickets were printed and distributed. Despite the \$50 face value of each ticket determined by City staff, the actual value was less than that amount. No ticket was actually sold.
- Section 2-444(c) of the Code explained that no public employee or official, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knew was a vendor, lobbyist, or any principal or employer of a lobbyist where the gift was for the personal benefit of that employee, his or her family member, or his or her household member, or a fellow employee or official.
- An exception to the gift law stated that a gift was allowed if it was solicited for or accepted by a municipal official or employee on behalf of the municipality in the performance of his or her official duties for use solely by the municipality for a public purpose.
- Staff submitted that the current City staff procedure for soliciting VIP tent donations violated the Code since the benefit was received solely by City officials and employees, and was not open to the public.

**PUBLIC COMMENTS:** City Commissioner Isaac Robinson, Jr., City Administrator Ed Mitchell, and Mr. Ostrau.

**X.b. – CONTINUED**

Judge Rodgers said that he disagreed with Mr. Ostrau's comment that the arrangement was contractual rather than a gift since the special arrangement was not made available to the public. He said that the original 1998 City resolution was outdated compared to the current COE requirements.

Mr. Johnson clarified that the issue was not that City staff was soliciting donations for the event, but that City staff was soliciting for a benefit that was limited to City employees, officials, and their guests.

Judge Rodgers commented that today's decision would also affect 37 other municipalities.

Commissioner Fiore stated that the VIP tent opened an avenue for lobbyists, representatives of corporate sponsors, to meet with public officials outside the general public's eye.

Commissioner Harbison stated that he believed that a 1998 City resolution did not add credibility to the current argument. He said that the concept of the VIP tent could be perceived by the public as corrupt.

Commissioner Galo said that the City's granting of VIP tent tickets was a form of an employer rewarding its employees; however, the City could revise the content of the 1998 resolution to better match the Code's requirements.

Mr. Johnson clarified that the contributions from vendors were not automatic as it would be in a normal contract. The contracts were entered into after the solicitations had been made, he added.

Commissioner Farach stated that Mr. Ostrau's explanation of what constituted a contract between the City and the vendors was actually a gift since it was not covered by the Code's contract exclusion. He said that the City could discuss the specifics of the VIP tent area in a publicly advertised meeting with the opportunity for public comment and a required vote by the appropriate representatives.

**MOTION to approve the proposed advisory opinion letter RQO 11-121. Motion by Robin Fiore, seconded by Judge Edward Rodgers, and carried 5-0.**

**X.c. RQO 12-008**

Mr. Johnson said that:

- A County employee, Rebecca Caldwell, asked whether she could accept two tickets, with a face value of \$125 each, to a banquet given by a nonprofit trade organization that lobbied the Palm Beach County government, where she would receive a plaque honoring her work in creating a countywide “universal building permit application.”
- Staff had submitted the following for COE approval:
  - County and municipal employees were not prohibited from accepting awards for civic or professional achievements.
  - The Code prohibited employees from accepting a gift with a value, in the annual aggregate, of more than \$100 from a lobbyist or the principal of a lobbyist who lobbied the employee’s government entity.
  - Should the value of the event tickets exceed \$100, the employee must return the difference to the organization.
  - Since the nonprofit organization employed a lobbyist, the Code’s gift carveout no longer existed and was not acceptable.
  - Since Ms. Caldwell was receiving a personal award and not an award on the County’s behalf, the award was not viewed as serving a public purpose.

**MOTION to approve the proposed advisory opinion letter RQO 12-008. Motion by Ronald Harbison, seconded by Judge Edward Rodgers, and carried 5-0.**

Mr. Johnson said that Ms. Caldwell was being diligent in reaching out to the COE for answers since others may have accepted the tickets and award without any type of reporting. Commissioner Farach added that it was appropriate to commend Ms. Caldwell’s actions.

**X.d. RQO 12-009**

Megan Rogers, Esq., COE staff counsel, stated the following:

- The advisory opinion relied primarily on prior COE decisions in RQOs 11-056, 11-059, and 11-013.
- Delray Beach Police Department (DBPD) Chief Anthony Strianese had asked whether his employees could attend a nonprofit organization's sponsored employee awards dinner and if so, what was required of the nonprofit sponsor and the DBPD employees.
- Staff had submitted the following for COE approval:
  - A public employee, or any person or entity on his or her behalf was prohibited from soliciting a gift of any value from a vendor, lobbyist, principal or employer of a lobbyist who sold, leased, or lobbied his or her public employer if the solicitation was for his or her own personal benefit, the benefit of the employee's relatives or household members, or the benefit of another employee.
  - The prohibition did not extend to soliciting or accepting donations from persons and entities who were not vendors, lobbyists, or principals or employees who sold or lobbied his or her public employer as long as there was no quid pro quo or other benefit given for the past, present, or future performance of an official act or legal duty.
  - Gifts over \$100 were to be reported on an employee's annual Palm Beach County gift reporting form unless one of several exceptions applied.
  - The definition of the word, gift, specifically excluded awards for professional or civic achievement, and accordingly, did not need to be reported.
- Annual scholarships provided by the Delray Citizens for Delray Police (DCDP) were not excluded from the Code's gift prohibition. A scholarship received by an employee's child could not be provided by a vendor or lobbyist. Additionally, an employee could not solicit anything of value from a vendor or lobbyist on behalf of another employee. The scholarship would be a reportable gift if it was solicited by a nonprofit entity.

**X.d. – CONTINUED**

- A public employee would not be prohibited from receiving a training scholarship in most cases as long as the scholarship helped to fund training that was related to his or her official position, and taken on behalf of his or her official job.
- An additional exception to the Code's gift prohibition was when a government solicited for equipment for its own use.
- The DCDP was allowed to donate dollars raised on behalf of the DBPD so long as those funds were specifically earmarked for the use of public training or goods.
- Condolence gifts would potentially not be considered to be a public purpose, and would be reportable and not subject to a gift law exception. An employee could not raise those funds on behalf of another employee or his or her family member.

**MOTION to approve the proposed advisory opinion letter RQO 12-009. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 5-0.**

**X.e. RQO 12-010**

Mark Bannon, COE senior investigator, stated that:

- Vice President Nanci Simonson, who was in charge of Branch Banking & Trust Company (BB&T) customer relations, had asked whether her employer could provide discounted banking services as a reward to employees and officials of certain municipalities that were BB&T customers.
- She asked whether the better option would be to offer the discounts to every County employee rather than employees of certain municipalities so that it would be considered a public offering.

**X.e. – CONTINUED**

- Staff had recommended that the latter option was best by the requirements of the Code.
  - The BB&T was prohibited from offering personal benefits over \$100 annually to individuals whose employers were BB&T banking customers.
  - A similar offer to all local governmental employees, regardless of whether their public employer was a BB&T banking customer, would not be prohibited by the gift law.

**MOTION to approve the proposed advisory opinion letter RQO 12-010. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 5-0.**

**XI. BOCA RATON VOTING CONFLICTS**

**XI.a. RQO 11-116**

**XI.b. RQO 11-120**

Mr. Johnson stated that staff had recommended that item XI. be tabled until the April 2012 COE meeting to allow Mr. Berger's participation.

Commissioner Farach agreed and said that the item could be addressed toward the beginning of the agenda.

Richard Radcliffe, League of Cities Director, said that he supported staff's recommendation.

Judge Rodgers asked staff to keep the COE informed on the issue so that members could provide suggestions once the ordinances were being revised.

**MOTION to table item XI. until the April 2012 Commission on Ethics meeting for discussion at the beginning of the meeting. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 5-0.**

**XII. EXECUTIVE DIRECTOR COMMENTS – None**

**XIII. Page 2**

**XIV. ADJOURNMENT**

**MOTION to adjourn the meeting. Motion by Judge Edward Rodgers, seconded by Daniel Galo, and carried 5-0.**

**At 6:45 p.m., the chair declared the meeting adjourned.**

APPROVED: APR 05 2012



Chair/Vice Chair