

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

August 15, 2013

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Patricia L. Archer
Daniel T. Galo, Esq.

STAFF:

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

ADMINISTRATIVE STAFF:

Amanda Canete, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Chair Manuel Farach stated that electronic devices should be turned off or silenced. He added that anyone wishing to speak should submit a public comment card.

IV. APPROVAL OF MINUTES FROM JULY 11, 2013

MOTION to approve the July 11, 2013, minutes. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0.

V. PROPOSED SETTLEMENT C12-013

Chair Farach said that the Commission on Ethics (COE) received a written proposed settlement regarding C12-013 signed by COE Advocate Kai Li Fouts, Esq., Marlene Ross, and respondent's attorney Scott Richardson, Esq.

Ms. Fouts said that:

- The COE had voted to find probable cause regarding Marlene Ross on December 6, 2012.
- Count 1 alleged that there was a violation of Article XIII, Section 2-443(b), corrupt misuse of official position, and Count 2, Article XIII, Section 2-443(b), corrupt misuse of official position, both in violation of the Palm Beach County Code of Ethics(Code).
- Ms. Ross responded to a subpoena from the State Attorney's Office. The facts and allegations of the case came to the COE's attention through Ms. Ross appropriately responding to the investigation.
- Counsel was requesting that the COE approve the agreement that was submitted. It was agreed that Ms. Ross would pay a \$500 fine regarding Count 1 with a request for the COE to consider dismissing Count 2.
- Ms. Ross would abide by the decision of the COE.

Mr. Richardson said that conversations occurred to resolve the matter without an evidentiary hearing. He said that Ms. Ross no longer held office.

Ms. Ross said that:

- She read and signed the negotiated settlement.
- She understood that by entering into the negotiated settlement she was agreeing to the allegations set forth in Count 1.

V. – CONTINUED

- She understood that the COE may impose a \$500 fine.
- As a result of the agreement, the COE may agree to dismiss Count 2.
- She has agreed to the terms with consultation from her attorney.

Vice Chair Fiore commented that the ethics violation did not result from a subpoena but from corrupt acts and misuse of office.

Ms. Fouts said that she agreed with the COE's willingness to dismiss Count 2 since the evidence was a function of the subpoena.

Commissioner Archer said that she supported the negotiated settlement and applauded Ms. Ross for coming forth and being honest.

Commissioner Daniel Galo said that he disagreed with the COE's ability to proceed with immunized testimony.

MOTION to approve the negotiated settlement for C12-013 as submitted. Motion by Patricia Archer, and seconded by Robin Fiore.

Vice Chair Fiore clarified that she seconded the motion since it had been stipulated that acts occurred.

UPON CALL FOR A VOTE, the motion carried 3-1. Daniel Galo opposed.

Chair Farach said that the advocate and respondent's counsel could offer suggestions regarding the public report and final order.

COE Intake Manager Gina Levesque said that:

- The public report and final order was similar to previously distributed copies.
- On page 1 under Count 2, the words, "certain," and "compromising" were removed.
- On page 2, the last paragraph, the words "compromising" or "inappropriate" were removed.

V. – CONTINUED

Mr. Richardson said that he agreed that the word, “to,” was unnecessary on page 3, the last paragraph which began, “According to.”

Vice Chair Fiore said that the comma and the fragment should be removed on page 3 of the last paragraph.

Mr. Richardson said that the language being removed by Vice Chair Fiore was also contained on page 1 under item 1 of the negotiated settlement.

Vice Chair Fiore said that Ms. Ross was being fined for a violation and not for a perception. Mr. Richardson responded that Ms. Ross was admitting that what had happened could lead to a perception of corrupt intent. He said that Vice Chair Fiore’s statement, “respondent admits to allegations contained in Count 1” was contrary to the negotiated settlement.

Vice Chair Fiore said that she needed to know if Count 1 was stipulated.

Ms. Fouts said that her understanding was that in resolving the matter, Ms. Ross would stipulate to Count 1.

Commissioner Galo suggested that the final paragraph should read, “According to the negotiated settlement and based upon the facts as set forth in the final order and the respondent’s acknowledgement that such facts could lead to a perception that there was a corrupt intent, the respondent admits that to the allegations contained in Count 1 of the complaint..”

Vice Chair Fiore suggested that the final paragraph should read, “According to the negotiated settlement and based on the facts as set forth in the final order, and that such facts could lead to a perception..., the respondent, therefore, admits to the allegation contained in Count 1 of the complaint..”

Chair Farach inquired if Mr. Richardson needed time to converse with his client.

RECESS

At 2:01 p.m., the chair declared a recess.

V. – CONTINUED

RECONVENE

At 2:22 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, and Galo present.

Mr. Richardson said that:

- The discussed language did not adequately and accurately reflect the negotiated settlement's terms.
- Ms. Ross had misspoke during her statement to the State Attorney. She should have used the word, "advocate."
- In retrospect, Ms. Ross' response to the City of Boynton Beach's manager was true.
- Ms. Ross did not have corrupt intent to misuse her official position.
- It could be perceived that actions had occurred that violated the Code.

Chair Farach said that anyone who voted in favor of accepting the negotiated settlement could request that the motion be reheard.

Vice Chair Fiore said that the COE could not fine Ms. Ross since she had agreed that if something hypothetically happened, it would be wrong. She said that the fine could only be a "buyout" of further inquiry.

Ms. Fouts said that:

- To resolve the matter, both parties agreed to negotiate.
- There were evidentiary problems with the case.
- Everyone had reviewed the COE's proposed order.

Vice Chair Fiore requested that the vote be recalled.

V. – CONTINUED

Commissioner Galo stated that the qualifying language was unclear as written and Mr. Richardson said that the suggested language change did not reflect Ms. Ross' version of what happened.

Commissioner Galo suggested adding the word, "recognizes," to page 3 in the paragraph that began, "According to..."

MOTION to withdraw approval of the negotiated settlement. Motion by Robin Fiore, seconded by Manuel Farach.

Chair Farach said that the COE wanted the final order to be "up" or "down" on Count 1 without the qualifying language.

UPON CALL FOR A VOTE, the motion carried 3-1. Patricia Archer opposed.

Chair Farach said that:

- No settlement had been approved.
- The item was being tabled. If counsel reached an agreement, it would be revisited before today's meeting was adjourned.

(CLERK'S NOTE: See page 9 for continuation of item V.)

UNSCHEDULED ITEM

Disclosure on C13-010

Vice Chair Farach said that he would be formalizing his Memorandum of Voting Conflict form (8-B) to recuse himself regarding C13-010.

- The citizen's complaint regarding Mayor Susan Whelchel came before the COE on July 11, 2013.
- The complainant referenced Archstone Palmetto Park, LLC., which was a client of his law firm.
- Form 8-B was filed with the COE and the City of Tallahassee.

**VI. EXPEDITED ADVISORY OPINION – REQUEST FOR OPINION (RQO)
13-014**

Executive Director Steven Cullen, Esq., said that County Administrator Robert Weisman had asked the COE whether it would violate the Code's anti-nepotism provision if the County hired his son as an assistant director of traffic engineering. He said that staff had drafted an opinion with Chair Farach's guidance due to some potential urgency.

Staff Counsel Megan Rogers, Esq., said that:

- By charter and rule the Board of County Commissioners statutorily designated hiring to four individuals, including the County Administrator.
- The anti-nepotism provision prohibited the County Administrator from employing any relatives.
- As the ultimate hiring authority, the County Administrator cannot delegate that responsibility to someone else.
- The Code's anti-nepotism provision mirrored State law.
- Staff recommended that Mr. Weisman's son would be unable to accept a County position.
- Although four to five levels of supervision were between the County Administrator and the Traffic Department, it was still his division.

Commissioner Galo expressed concern that an applicant was being disqualified because his relative held a position five steps above the applicant's job.

Chair Farach said that case law and the ordinance lacked a qualifier or an exception to the anti-nepotism provision.

MOTION to approve expedited advisory opinion RQO 13-014. Motion by Daniel Galo, seconded by Patricia Archer, and carried 4-0.

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA) – None

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 13-006

Ms. Rogers said that:

- A municipal attorney asked whether an official who owned a property management company that provided services to a condominium association (COA) was prohibited from participating or voting on a matter that may financially benefit an investor of several properties within the COA.
- The COA was not the applicant.
- The investor owned approximately 80 percent of the COA's units.
- There was a separate unrelated project coming before the City of Boca Raton (Boca Raton) council (City Council) by a unrelated developer.
- The investor owned the land where the future development may be built. He was not the developer seeking the change before the City Council.
- There was no special financial benefit to the investor based upon the City Council's vote.
- There were several layers of corporate form and separation between the elected official and the investor.
 - The investor did not hold any officer's position, nor was he on the COA's Board of Directors.
 - The investor constituted many different corporations and some family members. No family members held an officer's position or were on the COA's Board of Directors.
 - The investor was not the original developer.
- Staff recommended that the elected official was not prohibited from voting on the matter.

IX.a. – CONTINUED

Vice Chair Fiore said that no nexus existed since the person who was going before the City Council was unrelated to the investor who contracted with the elected official.

MOTION to approve the proposed advisory opinion RQO 13-006. Motion by Daniel Galo, seconded by Robin Fiore.

Chair Farach said that the first three sentences in the paragraph that began “Unlike the...” on page 3 were unclear and should be removed.

AMENDED MOTION to include the change as discussed. The maker and the seconder agreed, and the motion carried 4-0.

V. – CONTINUED

(CLERK’S NOTE: See pages 2-6 for earlier discussion.)

Ms. Fouts asked for more time to discuss the specific language. She asked that the matter be tabled until the October 2013 meeting.

MOTION to table C12-013 until the October meeting. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0.

(CLERK’S NOTE: The numerical order of the agenda was restored.)

IX.b. RQO 13-013

Ms. Rogers said that:

- A municipal police officer asked whether the City of Jupiter Police Department (JPD) was prohibited from assigning officers to live in government-owned residential properties within the JPD’s jurisdiction during their official duties.
- Where a municipal employee was assigned additional duties in his/her official capacity, additional compensation or value provided to the employee from his/her public employer was not a prohibited or reportable gift.

IX.b. – CONTINUED

- Due to a concern about potential crime, the JPD wanted to station two police officers to live on the Coast Guard's vacated properties.
- Assigning the officers involved a competitive process.

MOTION to approve proposal advisory opinion RQO 13-013. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0.

IX.c. RQO 13-015

Ms. Rogers said that:

- A County employee asked whether the anti-nepotism provision prohibited his fiancée from continuing to work for the County. He also asked if her continued employment was not prohibited, did the anti-nepotism provision exclude her from receiving any promotion or advancement while he served as an Assistant County Administrator.
- The Code's anti-nepotism section prohibited a public official from employing, appointing, promoting, or advancing his/her relative.
- The anti-nepotism provision did not require discharging someone who became a relative or whose relative took a higher position after the person's employment.
- It appeared that the Assistant County Administrator did not exercise control over promotion or employment of his fiancée within her department. As long as he did not advocate her promotion in the future, she was not prohibited or precluded by the ordinance from accepting a superior County position.

Vice Chair Fiore said that page 2 in the paragraph that began "Section 2-445," should say, "does not address" instead of, "does not prohibit." She said that the wording implied that the COE was giving permission to something that it did not address.

IX.c. – CONTINUED

Ms. Rogers said that:

- The COE’s traditional language could be added in the footnote stating that the opinion was limited to the County’s Code of Ethics, and that it had no applicability to State law.
- The previously discussed sentence would be reworded to say, “The Code of Ethics’ anti-nepotism provision does not prohibit two officials from working together, or one relative from supervising another.”
- The terms, “advancement and promotion,” were specifically defined by case law.

Vice Chair Fiore said that in reading the Florida statute, an official could not advocate on behalf of his/her relative. She said that the “In summary” paragraph on the last page could say; “So long as you do not advocate on behalf of your fiancée, this anti-nepotism provision...”

Commissioner Archer suggested adding the language, “promotion, position, or other advancement.”

Ms. Rogers said that the “In summary” language needed to mirror the ordinance’s language to include advancement, promotion, and employment or appointment.

MOTION to approve the proposed advisory opinion RQO 13-015 as amended to include the changes as discussed. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0.

X. EXECUTIVE SESSION – None

XI. EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Office of Program Policy Analysis and Government Accountability (OPPAGA) Update.

XI.a. – CONTINUED

Mr. Cullen said that OPPAGA staff still anticipated completion of its report in August 2013. He said that OPPAGA would contact the COE in advance and send a proposed draft for comments. He said that the draft would become a public record when OPPAGA submitted it.

XI.b.

DISCUSSED: Commissioner Vacancies.

Mr. Cullen said that he spoke to the president of the Palm Beach Chapter of Florida Institute of Certified Public Accountants (CPA), and he said that his group anticipated naming a commissioner within the next few weeks. He said that the Hispanic, the F. Malcolm Cunningham, Sr., and the County Bar associations sent an advertisement for the commissioner position with the closing date of August 19, 2013.

XI.c.

DISCUSSED: Commissioner Training.

Mr. Cullen said that staff completed most of the training materials and were scheduled to tape various segments next week. He said that staff had a tentative Circuit Court commitment to provide a judge for a question and answer session on best practices for a quasi-judicial hearing. He said that staff hoped to have the project completed by mid-September 2013.

Chair Farach said that the COE had previously discussed whether to apply rules similar to the Code of Judicial Conduct; however, the idea was rejected. Vice Chair Fiore responded that at the time the COE had lacked understanding regarding the degree to which quasi would be used. She suggested that the matter could be reviewed at a later date.

XI.d.

DISCUSSED: Web Site Revision.

Mr. Cullen said that the County was revising the entire COE Web site. He said that the Web site would have an e-book-type format and would be completed in less than one month.

XI.e.

DISCUSSED: Performance Metrics.

Mr. Cullen said that staff had met with County officials regarding performance data. He said that there was a tentative list of performance measures to add to those contained in the budget. He said that the County had placed some analytics on the Web site, and that a detailed printout would be provided to the commissioners.

XII. COMMISSIONER COMMENTS

XII.a.

DISCUSSED: Chair Farach's Resignation.

Vice Chair Fiore said that the commissioners regretted Chair Farach's resignation and would discuss the matter further at the next meeting.

XIII. PUBLIC COMMENTS – None.

XIV. ADJOURNMENT

MOTION to adjourn. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0.

At 3:33 p.m., the chair declared the meeting adjourned.

APPROVED:09/12/13



Chair/Vice Chair