

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

**SEPTEMBER 12, 2013**

**THURSDAY  
1: 34 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

**I. SWEARING IN OF NEW COMMISSIONERS**

Chief Judge of the 15<sup>th</sup> Judicial Circuit Jeffrey Colbath administered the Oath of Office to Michael Kridel and Salesia Smith-Gordon as new commissioners.

**II. CALL TO ORDER**

**III. ROLL CALL**

**MEMBERS:**

Robin N. Fiore, Ph.D., Vice Chair  
Patricia L. Archer  
Daniel T. Galo, Esq.  
Michael S. Kridel, CPA  
Salesia V. Smith-Gordon, 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:**

Dominique Marseille, Deputy Clerk, Clerk & Comptroller's Office

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

Commissioner Fiore asked that all electronic devices be silenced. She added that anyone wishing to speak should submit a public comment card with the item number included.

Commission on Ethics (COE) Executive Director Steven Cullen, Esq., stated that a quorum existed.

Commissioners Archer and Fiore welcomed the newly seated Commissioners Kridel and Smith-Gordon.

Commissioner Smith-Gordon said that she was honored to join the COE and appreciated the support from her family, the community, and the Bar associations.

Commissioner Kridel said that he was privileged to join the COE. He added that he looked forward to bringing perspective, balance, some professional skepticism, and fair judgment to the COE on behalf of the citizens of Palm Beach County.

#### **V. CHAIR NOMINATION/VOTE**

Commissioner Fiore asked for nominations for the chair and Commissioner Archer nominated Commissioner Fiore.

**MOTION to elect Robin Fiore as chair. Motion by Patricia Archer, seconded by Salesia Smith-Gordon, and carried 5-0.**

Commissioner Fiore thanked the COE members for electing her as chair and she stated that she would do her best in the position.

#### **VI. VICE CHAIR NOMINATION/VOTE**

Commissioner Fiore stated that the floor was open for vice-chair nominations and she nominated Commissioner Archer.

Commissioner Archer said that she was willing to serve as the vice chair.

**MOTION to elect Patricia Archer as vice chair. Motion by Robin Fiore, seconded by Daniel Galo, and carried 5-0.**

**VII. MANUEL FARACH AND RONALD HARBISON AWARD PRESENTATIONS**

Commissioner Fiore said that the COE valued the service of former Commissioners Farach and Harbison. She added that their work ethic had set a high standard for the COE.

(CLERK'S NOTE: Former Commissioners Farach and Harbison were presented with awards at this time.)

Former Commissioner Manuel Farach, Esq. said that the community should be thanked for supporting the COE in its efforts to improve the county.

Former Commissioner Ronald Harbison, CPA, thanked the COE for his recognition and said that the COE always put intellectual energy into making the right decisions. He added that the COE was guided by the COE's mission statement of restoring trust in the government.

Commissioner Galo said that he enjoyed working with former commissioners Farach and Harbison and that they both had achieved commendable accomplishments while working with the COE. Commissioner Archer added that the former commissioners had left a positive legacy that would be continued.

**VIII. APPROVAL OF MINUTES FROM AUGUST 15, 2013**

Commissioner Archer said that a space was needed between the words "the" and "specific," on page 10 of the minutes, under item V. She added that an extra letter "r" on page 13, under item XI.c., in the first line of the second paragraph, should be deleted.

**MOTION to approve the August 15, 2013, minutes as amended. Motion by Patricia Archer, seconded by Daniel Galo, and carried 5-0.**

**IX. DISCUSSION RE: OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY (OPPAGA) DRAFT REPORT**

Mr. Cullen said that:

- The COE was audited by the Office of Program Policy Analysis and Government Accountability (OPPAGA) in April 2013.
  - A draft report of OPPAGA's findings was provided to the commissioners and to the public.
  - The COE was asked to send an official response about the draft report by September 20, 2013.
  - Staff needed direction on completing a formal response to OPPAGA.
  - A workshop could be held to discuss the matter.

Commissioner Fiore said that the COE could request that staff respond to OPPAGA, or a workshop could be held at the next scheduled COE meeting.

Commissioner Galo said that a response to OPPAGA would be appropriate and necessary. He said he was concerned that the changes referenced in the report would alter the COE's work process. He added that the report's suggestion of delegating probable-cause proceedings to an administrative judge concerned him, since the COE would eventually lose its input on policy and discretionary decisions.

Commissioner Fiore said that OPPAGA may have misunderstood staff's process of producing a probable cause recommendation. She added that a judgment of probable cause was first evaluated by the COE's executive director before the COE's approval.

Commissioner Galo stated that the executive director determined whether a matter's allegations were legally sufficient before an investigation took place. He said that he could independently determine probable cause. He added that other ways existed to handle probable cause other than utilizing a third party.

## IX. – CONTINUED

Commissioner Archer said that the COE should be involved in the entire evolution of a case. She said that OPPAGA misunderstood how the COE worked. She added that the COE's current procedures should utilize educational tools.

Commissioner Fiore said that some of the commissioners were reluctant to recuse themselves regarding non-financial conflicts of interest in view of the Attorney General's letter.

Commissioner Galo said that he understood OPPAGA's objection over the commissioners being unable to recuse themselves. He added that commissioners could still choose to recuse themselves on a matter and disclose concerns about that same issue.

Commissioner Fiore requested that Mr. Cullen circulate a previous correspondence between former COE Executive Director Alan Johnson and the attorney general regarding recusal. She added that according to OPPAGA, the COE could create its own recusal procedure; however, that was contrary to the attorney general's instructions.

Commissioner Archer said that the commissioners had not recused themselves from voting except in the instance that conflict of interest could produce a financial benefit. She added that the commissioners should always disclose relationships, and that the policy should be incorporated into the COE's guidelines.

Commissioner Fiore said that concern existed whether the commissioners' disclosures would imply that they could not be fair.

Commissioner Smith-Gordon expressed concern that OPPAGA's report had revealed that a conflict of interest could be caused if a commissioner knew someone in the community. She said that since the commissioners served in the community, OPPAGA's conditions were too broad. She added that knowing someone did not mean that a relationship existed.

## IX. – CONTINUED

Staff Counsel Megan Rogers stated that:

- Under section 2-443 of the Code of Ethics (Code), recusal was appropriate when evidence of a financial interest was present.
- Under recusal circumstances, a commissioner would not participate in the matter; however, the commissioner would abstain from voting, file an 8B form with the Clerk and Comptroller's office, and read the reasons for his/her recusal at the following meeting.
- Provisions existed in the Code for bias, prejudice, and interests that were mentioned in the OPPAGA report.

Commissioner Kridel said that disclosure was a good preventative method in most cases; however, one should look at the context of a potential conflict, not just the conflict itself.

Commissioner Fiore said that the question was whether an individual was making an independent decision, not whether he/she had any interests. She said that people were created with interests, so it was necessary to look past those interests and make a judgment based on the facts. She requested that Mr. Cullen review the COE's nonfinancial disclosures policy.

Mr. Cullen suggested that an immediate response to OPPAGA should indicate the COE's concerns and that the matter would be discussed by the COE after further study.

### **PUBLIC COMMENT:**

Chief Assistant State Attorney Alan Johnson suggested that the COE respond to the OPPAGA report, since it was a public document. He said that the COE should not follow suggestions with which it disagreed. He added that the COE could inform OPPAGA that it only met once a month, and that the September 20, 2013, deadline was impossible to meet. The COE could inform OPPAGA that it would respond after the next COE meeting or after a workshop, he suggested.

Commissioner Archer suggested that the COE should refer to OPPAGA by October 20, 2013, since it only met on a monthly basis.

## IX. – CONTINUED

**MOTION to refer to OPPAGA by October 20, 2013. Motion by Patricia Archer, seconded by Salesia Smith-Gordon, and carried 4-1. Daniel Galo opposed.**

Commissioner Galo suggested responding to OPPAGA, by the September 20, 2013, deadline since the report was already out. He added that if no objections to OPPAGA's findings existed, a response was unnecessary.

Commissioner Fiore stated that Commissioners Kridel and Smith-Gordon may have been unable to read the draft report or background information.

Commissioner Archer clarified that her motion was to respond and request an extension before the September 20, 2013, deadline.

Commissioner Smith-Gordon said that she agreed with Commissioner Archer's clarification. She said that the COE needed to be detailed in its response to OPPAGA.

Commissioner Fiore said that under the Sunshine Laws, a workshop should be scheduled to discuss the draft report.

Mr. Cullen suggested that the draft report be discussed at the next scheduled COE meeting. He said that OPPAGA would not grant a request unless a workshop had been scheduled by OPPAGA's deadline.

Inspector General Sheryl Steckler said that the COE could request an extension of OPPAGA by telephone. She said that the COE could inform OPPAGA that it would schedule a workshop, ask for an extension or, respond immediately.

Commissioner Fiore said that the draft report could be discussed at a regular COE meeting.

Commissioner Galo said that he was unsure whether the COE should incorporate a workshop into a regular meeting.

The COE intake manager, Gina Levesque said that the report's discussion could be scheduled on the next meeting agenda and labeled as a workshop item with a specific timeframe.

## **IX. – CONTINUED**

Mr. Cullen stated that the report would be discussed at the October 3, 2013, COE meeting.

### **PUBLIC COMMENTS CONTINUED:**

Palm Beach County League of Cities Executive Director Richard Radcliffe said that the OPPAGA report missed points regarding how the COE functioned. He said that a lacking element from the COE was county and city governmental knowledge of ethics through education. He added that the report should have noted that the County had the best lobbyist registration in the state.

Alexandria Larson said that the COE should focus on lobbyist interactions with the county's leaders rather than on non-ethical matters. She added that the county's citizens cared about what the COE was doing.

Commissioner Fiore said that if appropriate, Mr. Cullen should prepare a draft response to OPPAGA.

Ms. Levesque said that State law noted that a reasonable notice for workshops was not necessarily 10 days in advance. She added that the COE could discuss the report on October 3, 2013, since it would already be noticed.

Commissioner Fiore stated that the COE would request a month-long deferral, and notify OPPAGA of the October 3, 2013, workshop.

## **RECESS**

**At 2:52 p.m., the chair declared the meeting recessed for an executive session.**

## **RECONVENE**

**At 3:56 p.m., the meeting reconvened with Commissioners Archer, Fiore, Galo, Kridel, and Smith-Gordon present.**

(CLERK'S NOTE: At the request of Commissioner Fiore, a roll call was taken and all members were present.)

**X.**           Pages 10-11



**XI. EXECUTIVE SESSION – C13-012**

Commissioner Archer read the following public order and final order of dismissal:

Complainant, Diana Demarest, filed a complaint on June 5, 2013, alleging a possible ethics violation involving Respondent, Jay Foy, Mayor of the Town of Haverhill.

On August 23, 2013, after reviewing the complaint, supporting affidavit, and memorandum of inquiry, the complaint was determined by staff to be legally insufficient. The Commission on Ethics' jurisdiction is limited to officials appointed by the Palm Beach Board of County Commissioners or a municipal governing body pursuant to section 2-442 of the Palm Beach County Code of Ethics. The Respondent was appointed to the Water Resources Task Force by the Palm Beach County League of Cities, and was not acting as Mayor of the Town of Haverhill. Therefore, on September 12, 2013, staff recommended that the Commission on Ethics dismiss the complaint as legally insufficient.

The Commission on Ethics reviewed the complaint and memorandum of inquiry and determined that it is not within the jurisdiction of the Palm Beach County Code of Ethics. Based on the information contained in the complaint, the commission recommended that this matter be referred to the Florida Commission on Ethics for further review in compliance with section 2-260.2 of the Commission on Ethics ordinance.

Therefore, the commission has determined it does not have jurisdiction over the Respondent, Jay Foy, in his official capacity as a member of the Water Resources Task Forces Advisory Board and dismissed the complaint on September 12, 2013, due to no legal sufficiency.

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Jay Foy, is hereby dismissed.

## **XI. – CONTINUED**

Done and ordered by the Palm Beach County Commission on Ethics in public session on September 12, 2013. Signed: Robin N. Fiore, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the public report and final order of dismissal. Item X. was taken at this time.)

### **X. DISCUSSION RE: COMMISSIONER TRAINING**

Mr. Cullen said that:

- The commissioner training project was underway, and staff taping of training sessions was almost completed.
- Commissioners were provided with a schedule and with the topics that would be covered in training.
- Training would be provided in a video format that was seven or eight hours.
- Staff anticipated that the COE members would be provided disks with the training video, within the next few weeks.
- The two new commissioners were given the Florida Sunshine Manual and all materials concerning the ordinances, codes, and rules that the COE used.

Commissioner Archer suggested that the COE members review the training materials in a workshop format. She added that at certain intervals in the year, the commissioners should review various training modules to remain knowledgeable.

Commissioner Smith-Gordon suggested that experiences that the COE encounters in its dealings with matters, could be incorporated onto the COE's Web site to serve as a refresher to the commissioners and as a resource to the public.

## **X. – CONTINUED**

Commissioner Kridel said that a powerful learning process existed when group interaction occurred. He suggested that deadlines be set when certain training modules should be finished. He added that the training could incorporate a workshop environment at the beginning and end of the training timeline.

Commissioner Fiore said that she would prefer to participate in the training at her convenience; however, she added, she would consider opportunities for the commissioners to discuss training materials.

Mr. Cullen informed the COE that the training had no transcript and that it consisted of Microsoft PowerPoint slides that could be reproduced.

Commissioner Fiore said that she was concerned about the accessibility of training materials for individuals who were unable to watch a video or hear a soundtrack. She added that the COE and staff should consider ways to make the materials available to everyone.

Commissioner Galo said that although the training should be accessible to the public, the materials did not need to be posted online. He added that the commissioners should watch the training videos to acquaint themselves with the Code, quasi-judicial hearings, and advisory opinions.

## **XII. EXECUTIVE DIRECTOR COMMENTS**

### **XII.a.**

**DISCUSSED:** Commission on Ethics' Web Site.

Mr. Cullen said that a graphic intern from Palm Beach State College would help to revise the COE Web site and to work on other projects in conjunction with the County's Information Technology Department. He added that staff had new screen shots of the COE's updated Web site.

Ms. Levesque said that David Kelly of the Palm Beach County Public Affairs Department and the new intern had spent extensive time working on the COE's Web site. She said changes included a side bar with fewer options, and a training information page with different videos and available materials. The COE's mascot could be included on the new Web site and that the COE's palm cards were being revised, she concluded.

## **XII.a. – CONTINUED**

Ms. Rogers said that staff was attempting to notify the public about future meetings and national and countywide ethical issues through the COE's Twitter and Facebook accounts.

Mr. Cullen said that staff had reviewed all of the advisory opinions to create a brief five-line summary and headnote of each subject matter for the COE's Web site. He added that the review was expected to take approximately 60 days.

Ms. Levesque informed the COE that advisory opinions were available on the Web site in portable document format, categorized numerically, and listed by subject matter. She added that Mr. Cullen and Ms. Rogers had handled categorizing advisory opinions and opinions were filed in order.

## **XIII. COMMISSION COMMENTS**

### **XIII.a.**

**DISCUSSED:** Welcome and Recognition.

Commissioner Smith-Gordon said that she was glad to be a part of an esteemed group of individuals.

Commissioner Kridel said that the COE's attention to detail was remarkable and that the commissioners' level of integrity was an outstanding model for other counties.

Commissioner Fiore said that every commissioner and staff member had left an enormous contribution to the COE. She added that she was looking forward to working with the new commissioners.

Commissioner Archer said that she was excited about seeing the COE evolve with the addition of the commissioners.

Commissioner Galo said that he welcomed the new commissioners.

XIV. Pages 6-8

XV. ADJOURNMENT

**MOTION to adjourn. Motion by Salesia Smith-Gordon, seconded by Patricia Archer, and carried 5-0.**

**At 4:23 p.m., the chair declared the meeting adjourned.**

APPROVED:



Chair/Vice Chair