

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

OCTOBER 3, 2013

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

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Robin N. Fiore, Ph.D., Chair
Patricia L. Archer, Vice Chair
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

ADMINISTRATIVE STAFF:

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

III. INTRODUCTORY REMARKS

Chair Fiore stated that all electronic devices should be silenced.

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

IV. APPROVAL OF MINUTES FROM SEPTEMBER 12, 2013

Chair Fiore said that on page five of the minutes, under item IX., the text stated that "Commissioner Fiore said that some of the commissioners were reluctant to recuse themselves regarding conflict of interest." She said that the sentence should include a phrase regarding the attorney general's letter on recusal. She added that the sentence should read "Commissioner Fiore said that some of the commissioners were reluctant to recuse themselves regarding nonfinancial conflicts of interest in view of the attorney general's letter."

MOTION to approve the September 12, 2013, minutes as amended. Motion by Patricia Archer, seconded by Michael Kridel, and carried 5-0.

V. PROPOSED SETTLEMENT C12-013

Chair Fiore said that the Respondent's representative and volunteer advocate were advised to review the wording of the proposed negotiated settlement and order. She added that an issue existed whether it was appropriate to rely to a conversation that the Respondent had with the State Attorney's Office (SAO).

Commissioner Galo said that the authority was split on whether the Respondent's statements to the SAO could be used against her in the COE's decision. He added that the State could legally compel statements; however, they could not be used in a subsequent criminal matter.

Chair Fiore said that staff counsel had advised that the COE could accept or reject the negotiated settlement but could not edit, add, or subtract anything from it. She added that if the COE rejected the settlement another offer may not be made.

Volunteer Advocate Kai Li Fouts, Esq., said that the proposed settlement was a proper resolution. She said that new facts, which resulted after probable cause was found, were taken into consideration. She added that Respondent, Marlene Ross, had been forthright and cooperative.

The Respondent's attorney, Scott Richardson, Esq. said that individuals entered into settlements since litigations were time consuming, expensive, and have no known results. He added that the proposal was fair for everyone concerned.

V. – CONTINUED

Ms. Ross said that she was entering into the agreement voluntarily without coercion and that she understood the agreement.

MOTION to accept the negotiated settlement for C12-013. Motion by Salesia Smith-Gordon, seconded by Patricia Archer, and carried 5-0.

Vice Chair Archer read the following final order:

Complainant Terry Aperavich, filed the above-referenced complaint on October 4, 2012, alleging possible ethics violations involving Respondent, Marlene Ross, City of Boynton Beach Commissioner. The complaint alleges two Code of Ethics violations:

Count 1 alleges that on or about July 7, 2011, and September 3, 2011, Respondent submitted false correspondence to Interim Boynton Beach City Manager, Laurie LaVerriere, regarding the City of Boynton Beach (the City) investigation into alleged lobbying activities of David Katz, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

Count 2 alleges that on or about January 3, 2012, Respondent nominated Katz to serve on the City Financial Advisory Committee (FAC) to prevent the exposure of certain photographs that would cause her embarrassment, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

Pursuant to Chapter 8, 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.

V. – CONTINUED

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

Based upon the filing of a sworn complaint, and pursuant to COE Rule of Procedure 4.1.3, a preliminary inquiry was commenced. Although it was determined that the initial complaint was not legally sufficient, after obtaining sworn statements from material witnesses and documentary evidence during the inquiry, sufficient competent evidence was obtained to warrant a legally sufficient finding. Thereafter, a memorandum of legal sufficiency was entered on November 15, 2012, a complaint was filed on November 19, 2012, by Alan Johnson, Executive Director of the COE, and an investigation was commenced pursuant to Article V, Division 8, Section 2-260(d). Information obtained during the inquiry was adopted into the investigation and presented to the COE on December 6, 2012, with a recommendation that probable cause be found that Code of Ethics violations occurred. At that time, the COE held a hearing in the matter and found that probable cause existed to believe that Respondent violated the Code of Ethics. The complaint was subsequently set for final hearing before the COE on March 21, 2013. Subsequently, on October 3, 2013, the COE advocate and Respondent submitted a negotiated settlement to the Commission for approval.

According to the negotiated settlement, Respondent agrees to pay a five hundred dollar (\$500) fine and accept a letter of instruction. Count two is dismissed.

Therefore it is:

Ordered and adjudged that this matter is concluded upon the payment of the aforementioned Five Hundred (\$500) Dollar fine and issuance of a letter of instruction.

V. – CONTINUED

Done and ordered by the Palm Beach County Commission on Ethics in public session on this 3rd day of October. Signed by: Robin N. Fiore, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the final order.)

Vice Chair Archer read the following letter of instruction:

Terry Aperavich (Complainant) filed the above captioned complaint against Marlene Ross, former City of Boynton Beach Commissioner (Respondent), alleging violations of the Palm Beach County Code of Ethics, Article XIII, Section 2-443(b), *Corrupt misuse of official position*. The complaint alleges, in part, that submitted false correspondence to Interim Boynton Beach City Manager, Laurie LaVerriere, regarding a City of Boynton Beach investigation into alleged lobbying activities of David Katz and nominated Katz to serve on the City Financial Advisory Committee (FAC) to prevent the exposure of certain photographs that would cause her embarrassment, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

Facts and Analysis

The facts as to Count One are as follows:

In July 2011, the City of Boynton Beach (the City) was conducting an investigation into alleged lobbying activity by David Katz regarding a towing contract with the City. At the time, the City had its own lobbyist ordinance which has subsequently been withdrawn and replaced with the Palm Beach County Lobbyist Registration Ordinance. Respondent, a sitting City Commissioner, was asked by the City Manager, pursuant to the City investigation, whether Katz had lobbied her regarding the towing contract issue. Katz prepared a letter stating that he had never lobbied Respondent, and Respondent signed the letter on July 7, 2011. Additionally, Respondent was asked by the City Manager to confirm the contents of the letter and did so in an email on September 3, 2011. She stated in the email that Katz had never lobbied her.

V. – CONTINUED

As a result, Katz, who was fined \$750 for violating the City Ordinance by lobbying other officials, was not fined, exposed, or otherwise sanctioned for allegedly lobbying Respondent. According to the City Manager, had Respondent been truthful and forthcoming, Katz would “very possibly” have received additional fines for lobbying Respondent because there is a \$250 penalty per incident.

Subsequently, in August 2012, a complaint was submitted to the Public Integrity Unit of the Office of the State Attorney (SAO) alleging that Katz had harassed, intimidated, and pressured Respondent into falsifying the letter and email to the City Manager. In a sworn statement to SAO investigators and in documents submitted to the SAO investigators at their request, Respondent cooperated and candidly acknowledged that Katz had, in fact, lobbied her regarding the subject matter of the City investigation and that she had submitted false information to the City Manager. Respondent alleged that Katz had extorted her through his aggressive and harassing actions and that she was in fear that Katz was in possession or had knowledge of photographs and that he would publish or otherwise use his knowledge of these pictures to negatively impact her reputation and political career. Respondent’s relationship with Katz was longstanding and included his active participation in her campaigns for City Commissioner between 2007 and 2011. The only public statement made by Katz implying the existence of photographs was made at a City Commission meeting on September 4, 2011, approximately one year after the submission of false statements by the respondent.

Holding

Section 2-443(b) – Corrupt Misuse of Official Position, states:

An official or employee shall not use his or her official position or office, or any property or resources 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.

V. – CONTINUED

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.

Section 2-260.3 – Dismissal of Complaints, states in part:

Notwithstanding any other provisions of this division, the Commission on Ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further.

The Commission is mindful of the facts and circumstances surrounding this matter. According to the negotiated settlement and based on the facts set forth in this letter of instruction, Respondent admits that the allegations contained in Count 1 of the complaint could lead to a finding by the Commission that she used her official position to corruptly secure a special benefit for herself and Katz in a manner which was inconsistent with the proper performance of her public duties. The basis of this complaint was derived from a State Attorney Public Integrity Unit (PIU) investigation which began because Respondent came forward and cooperated with the State Attorney’s Office and admitted to the above acts. While Respondent alleged that Katz extorted her by fear, harassment, and intimidation, the PIU investigative report found that Respondent had voted against Katz’s interests on a number of occasions. Moreover, pursuant to the Boynton Beach ordinance in effect at the time, a lobbyist was defined as a person who was either employed and receives payment for or who contracts for economic consideration for the purpose lobbying on behalf of a principal. Respondent relied on the opinions of others that Katz was paid for and engaged in lobbying activities. Witness testimony revealed the Respondent’s statement to LaVerriere did not impede the overall investigation into Katz’s status as a lobbyist. LaVerriere notified Katz that her investigation determined that he did violate the Boynton Beach lobbying ordinance, and he was subsequently fined a total of \$750. Finally, following a finding of probable cause by the Commission, Respondent immediately resigned her position as a public official.

V. – CONTINUED

In light of the facts and circumstances known, the Commission on Ethics has determined that the public interest would not be served by proceeding further, and this matter is appropriately addressed through imposition of a \$500 fine and issuance of this letter of instruction. The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are beyond reproach. During your service as an elected official, you were an agent of the people and held your position for the benefit of the public. The people's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare. Violations of the Palm Beach County Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public employees.

You are hereby admonished and urged to consider the letter and spirit of the Palm Beach County Code of Ethics and apply them in all future actions as a member of any public body to which you may be a part.

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on October 3, 2013. Signed by: Robin N. Fiore, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the letter of instruction.)

Vice Chair Archer read the following order:

As part of the negotiated settlement, the Commission on Ethics imposes a five hundred dollar (\$500) fine. Therefore, it is hereby:

Ordered and adjudged that the Palm Beach County Board of County Commissioners, c/o the Palm Beach County Commission on Ethics, located at 300 North Dixie Highway, Suite 450, West Palm Beach, Florida 33401, shall have and recover from the Respondent, Marlene Ross, the sum of Five Hundred (\$500) Dollars. Said sum is to be made payable to the Board of County Commissioners in the form of a certified check or money order no later than November 3, 2013.

V. – CONTINUED

Pursuant to Article V, Division XIII, Section 2-260.1(g), this order may be enforced by application to any circuit court of the State of Florida, which shall have jurisdiction to order Respondent to comply with an order of the Commission on Ethics.

Done and ordered by the Palm Beach County Commission on Ethics in public session on this 3rd day of October, 2013. Signed by: Robin N. Fiore, Chair.

(CLERK'S NOTE: The clerk added the language as printed in the order.)

Chair Fiore announced that members of the public that wished to address the COE should fill out public comment cards.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. RQO 13-017

Chair Fiore said that the COE's executive director regularly employed a consent agenda for items that did not require discretion, interpretation, or have any particular issues. She added that commissioners could request that items be removed from the consent agenda for discussion.

MOTION to approve processed advisory opinion RQO 13-017. Motion by Daniel Galo, seconded by Patricia Archer, and carried 5-0.

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. PROPOSED ADVISORY OPINIONS

VIII.a. RQO 13-016

Mr. Cullen said that the advisory opinion referenced whether a county advisory board member could be awarded a competitive bid contract. He added that the opinion stated that if the advisory board member in question complied with all of the requirements pursuant to the County's ordinance and the sealed bid exceptions, the board member would not be prohibited from obtaining a contract under the Code.

VIII.a. – CONTINUED

Commissioner Kridel said that the referenced advisory board dealt with appeals for issues related to previously submitted sealed bids and issues concerning those bids. He added that a sealed bid would have been processed before the advisory board saw it.

MOTION to approve proposed advisory opinion RQO 13-016. Motion by Daniel Galo, seconded by Salesia Smith-Gordon, and carried 5-0.

IX. WORKSHOP

DISCUSSION RE: RESPONSE TO THE OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY (OPPAGA) REPORT

Mr. Cullen said that he had completed a draft response to the eight findings of the Office of Program Policy Analysis and Government Accountability's (OPPAGA) draft report. He added that OPPAGA had no regulatory authority; therefore, the COE could take any action with the report.

PUBLIC COMMENTS: Iris Scheibl and Richard Radcliffe.

Vice Chair Archer said that although the League of Cities and the Chiefs of Police Association appointed COE members, they did not control the commission's decisions.

Chair Fiore said that the COE members believed that they represented every countywide citizen.

ADDITIONAL PUBLIC COMMENTS: Gale Howden, and Jennifer Gardener.

Chair Fiore said that the COE would discuss each finding in the OPPAGA report.

Finding 1: *"Commission practices sometimes blur the roles of investigators and the staff counsel."*

Mr. Cullen said that the First District Court of Appeal had reversed a September 13, 2013, appeal in a new case, *John McAlpin v. Criminal Justice Standards and Training Commission* by finding that the commission had obscured the role of staff counsel and advocate.

PUBLIC COMMENT: Dennis Lipp.

IX. – CONTINUED

Commissioner Galo said that:

- The COE enforced the Code concerning previous matters that had inappropriately influenced people.
- The COE possessed the proper skills needed to consider whether an allegation was legally sufficient to warrant investigation and whether an investigation promoted a public purpose.
- The response to OPPAGA should indicate that the COE was considering alternatives to solve the issues raised in the report.

Vice Chair Archer suggested that the COE consider appointing a nonpaid three-attorney advisory board that would review and make recommendations, for preliminary-probable-cause cases, once a month. She added that an unpaid board would not increase the COE's budget.

Commissioner Galo said that the COE's role was to enforce the Code by directing staff how to investigate a matter. He added that the COE's role was prosecutorial and judicial.

Chair Fiore said that the COE's procedures had should be satisfactory for 99 percent of the cases that the commissioners would encounter. She suggested including a response that the McAlpin case would be reviewed and taken under advisement, and that the COE would review utilizing a full-time advocate.

Finding 2: "Commissioners determine both probable cause and the outcome of a final hearing."

Commissioner Fiore said that:

- The COE could respond that, it would take OPPAGA's finding under advisement, since the commissioners had differing opinions.
- Deciding whether the commissioners could determine probable cause and a final hearing's outcome should be discussed at the next COE meeting.
- An analysis of the McAlpin decision should be considered when making the determination.

IX. – CONTINUED

- The response should state that since the COE members had differing opinions regarding OPPAGA's findings, more discussion was needed.

Finding 3: *"Conflict of interest provisions continue to be a source of concern for commissioners and others."*

Mr. Cullen said that State law and the attorney general's opinion covered the response to finding 3.

Chair Fiore said that the response should be rephrased to state that the commissioners were constrained, rather than uncomfortable, with conflict of interest. She said that since the COE members could not recuse themselves, the perception of conflict of interest could exist, and disclosure was the only way to address it.

Commissioner Smith-Gordon suggested replacing the words, "if they feel uncomfortable," with language stating that the perception of conflict must be announced regarding a financial interest.

Chair Fiore said that no affirmative duty to disclose relationships existed outside of one's professional requirements.

Mr. Cullen said that he would review the COE's procedures and bylaws regarding disclosure and recusal and amend the response's language to include the changes discussed.

Finding 4: *"The commission could benefit from clarifying commissioner disqualification terms and procedures."*

Mr. Cullen said that he believed OPPAGA's report was referring to a trial since the report referenced trial rules.

Commissioner Galo said that the language in Finding 3 probably meant that someone who believed that a commissioner was unfit to make a final judgment could request recusal or disqualification.

IX. – CONTINUED

Mr. Cullen said that the OPPAGA report had two issues with the COE. He said that the first issue was with the concept of bias, interest, or prejudice at trial, and the second issue was that those concepts had to be raised more than five days prior to a trial.

Chair Fiore said that commissioners accused of bias, interest, or prejudice should decide whether to disqualify himself or herself from voting on a matter. She added that procedurally issues were raised five days prior to a trial since a quorum was not always possible.

Mr. Cullen suggested that the COE change its rule to state that disqualification on a matter could be made at any time.

Vice Chair Archer agreed that the COE's rule should be changed to reflect OPPAGA's suggestions.

Finding 5: *"The commission's expanded jurisdiction changes the nature of appointments and could diminish its independence."*

Commissioner Galo said that the COE's position should be that its members were selected not based on who they represented, but on each commissioner's experience. He suggested that the response include that the COE's makeup fit its function.

Chair Fiore suggested the wording, "The composition fits the purpose of the commission."

Finding 6: *"Vendors and lobbyists are now subject to the county ethics ordinance but not required to receive training."*

Chair Fiore said that training was available on the COE's Web site to any vendor or lobbyist.

Mr. Cullen said that video training was available, and upon request, live training could be conducted.

Chair Fiore suggested that the last sentence in the proposed response be moved to the beginning.

IX. – CONTINUED

Vice Chair Archer said that training should be reviewed, since it was available but not required.

Assistant County Attorney Leonard Berger said that requiring the numerous County vendors and lobbyists to take training may be beyond the COE's mission. He added that lobbyists often came from other states, registered on the same day, addressed the board, and immediately left.

Chair Fiore suggested adding that for practicality and cost purposes, training was available but not required.

Commissioner Galo said that the response could state that the Ethics Ordinance Drafting Committee had considered and found the same issues to be an unworkable model.

Vice Chair Archer said that the model may be unworkable for vendors; however, newly registered lobbyists working for more than 30 days should take training.

Chair Fiore suggested that the COE's Web site include a tab that contained short understandable training materials. She added that when registering, staff could instruct lobbyists how to access the training.

Finding 7: *"The commission could benefit from enhanced commissioner training."*

Finding 8: *"The commission could improve its performance accountability system."*

Mr. Cullen said that the responses to Findings 7 and 8 had already been discussed and that he could provide OPPAGA with performance measures and other documentation with the changes.

Chair Fiore said that the COE could give OPPAGA a reference point where the changes occurred in the responses.

MOTION to approve that the responses to OPPAGA's report, as amended, to include the revisions discussed. Motion by Patricia Archer and seconded by Daniel Galo.

IX. – CONTINUED

SUBSTITUTE MOTION to approve directing Mr. Cullen to draft the OPPAGA report responses, as amended, to include the modifications and corrections as discussed. Motion by Daniel Galo, seconded by Salesia Smith-Gordon, and carried 5-0.

The following final responses are as submitted by Mr. Cullen to the OPPAGA report:

Finding 1: *“Commission practices sometimes blur the roles of investigators and the staff counsel.”*

Response: This finding describes some of the dynamics inherent in a small staff. Specifically, staff counsel may both serve as both as policy and procedure advisor to the commission as well as serve as advocate. Additionally, staff counsel and the lead investigator (also an attorney) may serve as advocates during probable cause hearings and trials. As long as the roles of advocate and legal advisor to the Commission do not overlap in a given case, the First District Court of Appeal has found no legal prohibition against the consolidation of investigative, prosecutorial and adjudicative authority in a single agency. (McAlpin v. Criminal Justice Standards and Training Commission, Case # 1D12-2819, September 13, 2013)

To preserve independence and save costs, a volunteer advocate program has been created and expanded. This program provides for the use of skilled pro bono attorneys prosecuting cases before the Commission. The Commission may also consider the feasibility of utilizing the services of a full or part-time advocate at a future time.

IX. – CONTINUED

Budgetary constraints likely prohibit the outsourcing of either investigative or prosecutorial functions. It is estimated that doing so would increase the budget by 100-200%. The investigative staff does not make any recommendation as to findings of probable cause. The Commission believes that the current system best balances competing concerns while maintaining fiscal control.

Finding 2: *“Commissioners determine both probable cause and the outcome of a final hearing.”*

Response: The Commission on Ethics Ordinance sections 2-260 (d) and 2-260.1 require commissioners to perform both functions. The standard for determining probable cause is whether there are reasonably trustworthy facts and circumstances for the Commission to believe that a violation has occurred. The standard at a final hearing is proof by clear and convincing evidence. Commissioners, serving in a quasi-judicial capacity, are fully capable of separating these functions and judging the evidence against the (different) legal standards. Circuit judges perform these differing functions frequently. Outsourcing the trial function to DOAH judges may raise legal issues and/or be cost prohibitive.

There is some sentiment in the Commission both for and against supporting changes to the Ordinances and Rules in favor of outsourcing the trial function. This matter was taken under advisement and staff was directed to further study the issues. This matter may be taken up in the future.

IX. – CONTINUED

Finding 3: *“Conflict of interest provisions continue to be a source of concern for commissioners and others.”*

Response: State law requires commissioners to vote on business before the Commission unless they meet the grounds for recusal (Fla. Stat. §286.012, Palm Beach County Code of Ethics §2-443). Only a significant statutory change, which the commissioners have no control over, would allow them to recuse themselves for other than financial reasons. The current practice is to disclose relationships even where no financial conflict exists. The commission may consider the adoption of rules to define these disclosure practices.

Finding 4: *“The commission could benefit from clarifying commissioner disqualification terms and procedures.”*

Response: The existing disqualification procedure is in line with the general law of judicial recusal. The commissioner against whom a disqualification motion is directed hears the motion. A commissioner faced with a motion to disqualify filed outside of the time restrictions of the Rule would have discretion to hear the motion. A Rule change permitting a motion to be filed at any time may be considered.

Finding 5: *“The commission’s expanded jurisdiction changes the nature of appointments and could diminish its independence.”*

Response: The composition of the Commission fits the purpose for which it is intended. Moreover, any change in the way commissioners are appointed would require a recommendation for such change, the work of a drafting committee and approval by the Board of County Commissioners. Any of the other existing appointing entities (including the local bar associations, the CPA Institute and Florida Atlantic University) could easily have members within their ranks subject to the Code of Ethics.

IX. – CONTINUED

Finding 6: *“Vendors and lobbyists are now subject to the county ethics Ordinance but are not required to receive training.”*

Response: The countywide Lobbyist Registration Ordinance was effective on April 2, 2012. Live training was provided for vendors and lobbyists before the effective date. A video training has been available through our website since the effective date and is currently being revised. Live training presentations continue to be available upon request. Any change to require training for vendors and/or lobbyists and/or principals, or employers of lobbyists would require a recommendation for such change, the work of a drafting committee and approval by the Board of County Commissioners. The costs associated with providing mandatory training, and maintaining oversight of this function, may be prohibitive. It may be possible to increase the awareness of vendors and lobbyists of the availability of existing training. Staff will undertake to make the access to training materials more visible on the new Commission website. The Commission may revisit this issue in the future.

Finding 7: *“The commission could benefit from enhanced commissioner training.”*

Response: Staff has just completed a comprehensive commissioner training video. This, approximately 8-hour, program includes a comprehensive review of all Ordinances, Rules, Procedures, investigative overview, advisory opinions, quasi-judicial functions, best practices during hearings and the Sunshine Law. All commissioners have been provided with a complete copy of all Ordinances, Rules, Policy and Procedure Manuals and the Government in the Sunshine Manual. Yearly updates and retraining are planned.

IX. – CONTINUED

Finding 8: *“The commission could improve its performance accountability system.”*

Response: Staff has expanded the performance measures contained in the annual budget documents. Additionally, surveys have been placed on the website to collect user data. Website analytics have been implemented to identify patterns of use. Surveys distributed at trainings collect data on the effectiveness of training and to gauge the effects of ethics reforms. These data will be used to develop enhanced strategic plans.

RECESS

At 3:38 p.m., the chair declared the meeting recessed for an executive session.

RECONVENE

At 3:50 p.m., the meeting reconvened, and at the Chair’s request for a roll call, Vice Chair Archer, Chair Fiore, and Commissioners Galo, Kridel, and Smith-Gordon were present.

X. REVISIONS TO RULE OF PROCEDURE 4.2.

Mr. Cullen said that staff was proposing a change to rule 4.2, which contained language requiring legally insufficient complaints to be submitted to the COE for dismissal. He added that staff’s recommendation was to change the language to permit that legally insufficient complaints could be disposed shortly after being heard by the COE.

Mark Bannon, COE Senior Investigator, said that:

- No difference existed between fact finding for an inquiry other than, one was a sworn complaint and the other was unsworn.
- If an individual swore to a complaint that had no COE jurisdiction, the sworn complaint would have no legal sufficiency.

X. – CONTINUED

- Any actions by the COE became public record regardless of whether they came before the commissioners.
- According to the ordinance, a sworn statement by Mr. Cullen, the Inspector General, or the State Attorney was considered legally sufficient.

Chair Fiore suggested that the COE include a consent agenda that would inform the commissioners of legally insufficient findings.

Commissioner Galo said that the commissioners should determine the necessity of reviewing staff's legally insufficient findings.

Mr. Bannon said that the rule could be written to state that the executive director would bring complaints before the COE in any form if he or she believed the matter should be discussed.

Commissioner Smith-Gordon asked about the process for filing a complaint that had not been sworn, if allegations contained in the complaint fit all of the requirements needed for the matter to go before the COE.

Mr. Bannon said that staff could ask the complainant to make a sworn complaint, or staff could gather enough documentary evidence or witness statements to show that a clear issue was present.

Vice Chair Archer expressed concern about the commissioners viewing findings that were dismissed by staff. She added that she preferred to view items deemed as legally insufficient on a consent agenda to see who the parties were and whether staff's final decision was correct.

Mr. Bannon said that staff would review how to keep the commissioners informed of all cases regardless of the findings. He added that staff could provide the commissioners with an executive summary of all completed cases.

MOTION to table item X. until the next scheduled COE meeting. Motion by Patricia Archer and seconded by Daniel Galo.

X. – CONTINUED

Intake Manager Gina Levesque said that once a matter was determined to be legally insufficient, the complainant and the respondent were provided with a letter sent by email. She said that the letter with accompanying documents that COE staff had collected explained the disposition of the complaint.

UPON CALL FOR A VOTE, the motion carried 5-0.

XI. EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Commissioner Training and The Opinions Summary Project.

Mr. Cullen said that commissioner training should be available at the end of October 2013. He said that he had finished a year of opinion summaries, and that staff was hopeful that the project would be completed within 30 to 60 days. He added that staff had revised the survey form that was handed out to participants at live trainings so that they could gather more data that was consistent with OPPAGA's recommendations.

XI.b.

DISCUSSED: Commission on Ethics' Web site.

Mr. Cullen said that work continued on the COE's Web site. He said that Ms. Levesque and the Information Technology Department would provide a Web site update at the next meeting. He added that staff had posted a new training video to the COE's Web site.

XI.c.

DISCUSSED: The Volunteer Advocate Program.

Mr. Cullen informed the COE of the four new members of the volunteer advocate program from the Legal Aid Society. He added that staff wanted to conduct training for the advocates before the end of the year.

Chair Fiore suggested that the volunteer advocates receive thank-you letters after working on a case.

XI.c. – CONTINUED

Ms. Levesque said that volunteer advocates previously had received Florida Bar Association credits for their participation; however, the four-hour Bar-approved COE course had expired.

Chair Fiore said that the volunteer advocate training was available for review by the commissioners.

XII. COMMISSION COMMENTS

XII.a.

DISCUSSED: Recognition.

Vice Chair Archer commended Chair Fiore by saying that she was doing a great job of running the meetings.

Chair Fiore said that she appreciated the support from her fellow commissioners.

XIII. PUBLIC COMMENTS – None

XIV. ADJOURNMENT

MOTION to adjourn. Motion by Daniel Galo, seconded by Salesia Smith-Gordon, and carried 5-0.

At 4:18 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair