

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
STATUS CHECK DISCOVERY HEARING
PALM BEACH COUNTY, FLORIDA**

JANUARY 12, 2017

**THURSDAY
2:14 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

**I. CALL TO ORDER (COMMISSIONER SARAH L. SHULLMAN
PRESIDING)**

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair
Clevis Headley, Vice Chair – Absent
Michael F. Loffredo – Absent
Judy M. Pierman – Absent
Sarah L. Shullman

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Abigail Irizarry, COE Investigator I
Christie E. Kelley, Esq., COE General Counsel
Gina A. Levesque, COE Intake and Compliance Manager

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commissioner Sarah Shullman said that the status check discovery hearing involved C16-006, Respondent Rowan Hughes, and was pursuant to Section 2-260 of the COE ordinance. She stated that the upcoming final hearing would be a public hearing.

(CLERK'S NOTE: Item VI. was presented at this time.)

VI. RULES FOR FINAL HEARING

Commissioner Shullman said that:

- Motions were permitted for the final hearing and would be reviewed and voted on prior to the final hearing.
- The COE would review admissible and relevant evidence based on the rules of evidence, which were different from the Florida Rules of Civil Procedure.
- Subpoenas could be issued for depositions and for the final hearing.
- The parties could enter into a stipulation at any point.

(CLERK'S NOTE: Item VI. was continued on pages 5-9, and item V.a., was presented at this time.)

V. SCHEDULING (DATES)

V.a. Final Hearing

Chair Michael Kridel stated that the final hearing should not last more than one day.

Gina Levesque, COE Intake and Compliance Manager, said that a Wednesday or a Friday was preferred for the final hearing. She added that the Commission Chambers was available on the 15th, 17th, 22nd, and 24th of February 2017.

Patrick Quinlan, Volunteer Advocate, said that he and Jaloni (phonetic) Davis, Mr. Hughes' counsel, mutually agreed that a half-day for the final hearing should be adequate.

Commissioner Shullman said that four hours would be scheduled.

Mr. Quinlan said that Mr. Davis wanted to depose the two auto repair shop individuals who were involved in the matter. He suggested that the final hearing begin with a witness at 11:00 a.m., followed by a lunch break before the other witness appeared in the afternoon.

V.a. – CONTINUED

Mr. Hughes said that he would be accommodating but did not want his situation compromised by both witnesses corroborating their testimony.

Commissioner Shullman said that:

- The final hearing was being discussed and not the depositions.
- Both witnesses would not be present for each other's testimony at the final hearing
- The COE regular meeting and the final hearing would be scheduled for March 2, 2017.
- The COE regular meeting would tentatively begin at 9:00 a.m., and the final hearing would begin at 11:00 a.m.

(CLERK'S NOTE: Items IV. and V.b through V.d. were presented at this time and discussed in tandem.)

IV. C16-006 STATUS

V.b. Final Witness and Exhibit List Due

V.c. Motions Due

V.d. Motion(s) Hearing

Mr. Quinlan said that a settlement would probably not be reached before the final hearing.

Mr. Davis stated that he had no other depositions scheduled other than the auto repair shop witnesses.

Mr. Quinlan said that he did not anticipate requesting any prehearing depositions, document production, or other prehearing discovery. He added that a scheduling issue emerged when the two witnesses contacted an attorney to possibly appear at the depositions.

IV., V.b. – V.d. – CONTINUED

Ms. Levesque explained that the attorney was not retained as a counsel but as someone clarifying the subpoenas and requesting that the depositions be scheduled at least three hours apart.

Mr. Davis stated that the depositions would be rescheduled after today's discovery hearing.

Mr. Quinlan said that he did not anticipate filing any prehearing motions.

Mr. Davis said that he probably would file an *ore tenus* motion to adopt the witnesses. He asked whether Mr. Hughes' work performance could be discussed during the final hearing and whether former coworkers could be brought in to attest to Mr. Hughes' truthfulness and honesty.

Mr. Quinlan responded that he needed to know what specific information would be brought to the final hearing.

Mr. Davis said that:

- Mr. Quinlan's request was premature because the coworkers had not yet been contacted, and it was unknown whether they would testify for Mr. Hughes.
- If applicable, a timely written motion would be prepared for Mr. Quinlan's review.
- If both parties agreed with the motion, the matter would not be brought before the COE.

Commissioner Shullman stated that the rules of evidence specifically stated that evidence relevant to the issues was admissible.

Mark Bannon, COE Executive Director, clarified that a written motion could be ruled on outside of the final hearing.

Mr. Quinlan said that under the rules of evidence, he had seven days to respond in writing to a written motion.

IV., V.b. – V.d. – CONTINUED

Commissioner Shullman said that:

- Under the rules of evidence, motions should be filed 10 days prior to the final hearing; however, that would not give Mr. Quinlan enough time to investigate the testimony of Mr. Davis' potential witnesses.
- Any witness lists and motions regarding witness testimony should be provided by 5:00 p.m., January 19, 2017.
- All other motions not requiring additional testimony should be provided by February 3, 2017.

Mr. Bannon said that witness lists and motions should be sent to staff, who would forward them to Commissioner Shullman.

Mr. Quinlan said that:

- He prepared and reviewed a draft exhibit list for Mr. Davis.
- Most of his exhibits probably would not be offered at the final hearing.
- Further discussions and factual stipulations regarding what evidence would be presented at the final hearing could take place when the depositions were scheduled.

Commissioner Shullman said that exhibit lists should be provided by February 3, 2017, and objections to items on the exhibit lists by February 10, 2017. She said that rather than scheduling a motion(s) hearing, both parties should provide advanced notice to staff if they believed that a motion(s) hearing was necessary.

(CLERK'S NOTE: Item VI. was continued at this time.)

Commissioner Shullman said that:

- The final hearing would be recorded.
- Mr. Hughes could provide his own court reporter.
- Mr. Quinlan would present his opening statement first.

VI. – CONTINUED

Mr. Quinlan said that Abigail Irizarry, COE Investigator, was listed as a witness, and some Environmental Resources Management employees may be called to address some narrow issues. He said that examination of Mr. Hughes and the two auto repair shop individuals may take longer.

Mr. Davis said that Ms. Irizarry may be called as a rebuttal witness to rebut any statements that contradicted previous statements by the two auto repair shop individuals. He added that any other witnesses testifying about Mr. Hughes' credibility would be forwarded to Ms. Levesque and to Mr. Quinlan by January 19, 2017.

Commissioner Shullman said that:

- Any witnesses not reflected on the witness list may not testify; however, last-minute witnesses may be considered depending upon the situation.
- Irrelevant and unduly repetitive evidence may be excluded.
- Witness affidavits would not be allowed into evidence when the witness could be called to testify.
- Oral evidence or witness testimony shall be taken by oath or affirmation.

Mr. Bannon said that under the COE ordinance, Commissioner Shullman could swear in witnesses; however, the clerk was authorized and would be asked to do so.

Commissioner Shullman said that:

- Relevant evidence may be admitted. Hearsay evidence may be admitted to supplement or explain other evidence; however, hearsay evidence shall not be sufficient in and of itself to support any findings.
- Stipulations by either party could be made at any time, and the COE at its discretion could dismiss the complaint during any stage of the proceeding.
- At the conclusion of the final hearing, both parties may present written proposed public reports within a designated time.

VI. – CONTINUED

- If a proposed public report was filed, each proposed finding that was rejected shall be accompanied by a statement summarizing the reasons for rejection.
- After the final public hearing, the COE shall make a finding and produce a public report on whether any provision within its jurisdiction was violated.
- If the COE found by clear and convincing evidence, based upon competent substantial evidence in the record, that a violation was committed, the COE shall issue an order imposing the appropriate penalty as provided in the COE ordinance.
- The final order shall also include a determination whether the violation was intentional or unintentional.

Mr. Bannon clarified that the culmination of a final hearing was similar to a jury trial except that the COE would publicly discuss and determine the outcome through the voting process.

Commissioner Shullman suggested that the COE define the standard for “clear and convincing evidence” at the February 2017 COE meeting. She added that the COE shall, within 12 months of the complaint’s filing, render a final order disposing of the complaint.

Ms. Levesque said that she had the ability to edit the COE’s final order if it was issued on the day of the final hearing.

Commissioner Shullman stated that:

- If the COE found that a violation existed, the respondent could be subjected to public reprimand, a fine of up to \$500, or both.
- The COE may also order the respondent to pay restitution when the person or entity received a pecuniary benefit.
- If Mr. Quinlan believed that Mr. Hughes received a pecuniary benefit, he should include that information in his presentation.

VI. – CONTINUED

Mr. Quinlan responded that he did not anticipate presenting any evidence that Mr. Hughes received a pecuniary benefit.

Commissioner Shullman said that:

- If someone failed to comply with a COE order, the COE may apply to the Circuit Court.
- Willful violations may be referred to the State Attorney's Office.
- A final order may be appealed by filing a petition for *writ of certiorari* in the Fifteenth Judicial Circuit Court.
- The COE shall provide the index and record on appeal in accordance with the Florida Rules of Appellate Procedure.

Mr. Bannon clarified that the COE's final determination required a majority vote and that the COE could probably ask questions during the proceeding.

Mr. Davis requested that the COE be allowed to ask questions, and Mr. Quinlan agreed with that request.

Ms. Levesque requested that both parties contact her regarding coordination of the two depositions.

Mr. Davis stated that he would submit a subpoena *duces tecum* so that both witnesses could bring documents to the depositions. He said that Mr. Valuche (phonetic) could explain the procedure to the witnesses.

Ms. Levesque said that Mr. Valuche was an attorney and a personal friend of the witnesses.

Mr. Bannon explained that Mr. Valuche was voluntarily helping to answer some of the witnesses' questions and was not legally representing them.

Commissioner Shullman said that although both parties were at an impasse in reaching a stipulation, they should continue to consider it.

Mr. Quinlan said that he and Mr. Davis would try to reach an agreement about some of the factual issues.

Commissioner Shullman said that both parties could submit a statement on any agreed-upon factual issues, but it was not required.

VII. EXECUTIVE DIRECTOR COMMENTS

DISCUSSED: Commendation.

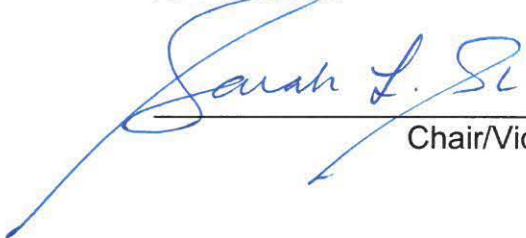
Mr. Bannon thanked Commissioner Shullman for presiding over the status check discovery hearing.

VIII. PUBLIC COMMENTS – None

IX. ADJOURNMENT

At 3:04 p.m., Commissioner Shullman declared the meeting adjourned.

APPROVED:



Chair/Vice Chair