

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

MARCH 2, 2017

**THURSDAY
9:10 A.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

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

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Executive Director
Anthony C. Bennett, COE Chief Investigator
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

Chair Michael Kridel said that today's primary business involved the final hearing on C16-006.

IV. MINUTES

IV.a. January 12, 2017 Meeting

MOTION to approve the January 12, 2017 minutes. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.

IV.b. February 2, 2017 Meeting

MOTION to approve the February 2, 2017 minutes. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 5-0.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. Request for Opinion (RQO) 17-002

MOTION to approve the consent agenda. Motion by Judy Pierman, seconded by Clevis Headley, and carried 5-0.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. EXECUTIVE DIRECTOR COMMENTS – None

VIII. COMMISSION COMMENTS – None

IX. PUBLIC COMMENTS – None

RECESS

At 9:12 a.m., the chair declared the meeting recessed.

RECONVENE

At 9:55 a.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.

X. FINAL HEARING C16-006

Chair Kridel stated that Commissioner Sarah Shullman would preside over the C16-006 final hearing.

X. – CONTINUED

Patrick Quinlan, Commission on Ethics (COE) Volunteer Advocate, said that:

- Abigail Irizarry, COE Investigator, prepared a thumb drive containing the COE's list of numbered exhibits with hyperlinks to the specific exhibits.
- He and Jeloni Davis, counsel for Respondent Rowan Hughes, agreed to mark the thumb drive as Exhibit A.
- Specific hard-copy exhibits would be shown to witnesses and provided to the COE. Hard-copy exhibits would be included in the thumb drive except for the Office of Inspector General (OIG) report.
- He and Mr. Davis agreed that COE witness Daniel Bates, Environmental Resources Management (ERM) Deputy Director, could appear by telephone.

Commissioner Shullman stated that:

- The final hearing was being recorded by PBC TV Channel 20.
- Evidentiary standards for the public hearing would be based on criteria contained in Section 2-260.1 of the COE ordinance.
 - The public hearing shall not adhere to the technical rules of evidence and witnesses, and relevant evidence may be admitted.
 - Hearsay evidence could be admitted if used to supplement and explain other evidence or testimony but would not, in and of itself, be sufficient to support a finding.
 - Oral evidence taken under oath or affirmation would be administered by Gina Levesque, COE Intake and Compliance Manager.
 - Submission of affidavits from witnesses who may have been called to testify but did not appear would not be allowed.
 - Witness depositions were permitted.

X. – CONTINUED

- Mr. Quinlan would make a brief presentation, followed by Mr. Davis or Mr. Hughes. Rebuttal would be allowed at the discretion of the presiding commissioner.
- Mr. Quinlan would present his case, including witnesses and documentary evidence.
- Mr. Davis could cross-examine witnesses upon completion of direct examination and would then present his case and any witnesses or documentary evidence.
- Mr. Quinlan could cross-examine Mr. Davis' witnesses upon completion of direct examination. Rebuttal would be allowed at the discretion of the presiding commissioner.
- Mr. Quinlan and Mr. Davis could impeach a witness regardless of who called the witness to testify.
- Mr. Quinlan and Mr. Davis could make a brief closing statement after submitting all evidence and witness testimony. Rebuttal would be allowed at the discretion of the presiding commissioner.
- Once all witnesses were heard and all evidence was submitted, the evidentiary standard would be addressed again.
- The COE would then engage in public discussion, evaluate the evidence, and determine whether a violation occurred.
- A finding would be determined at the end of public discussion.
 - If the COE found by clear and convincing evidence that a violation was committed, the COE would issue an order imposing the appropriate penalty based on competent, substantial evidence in the record.
 - The finding would also include a determination of whether the violation was intentional or unintentional.
 - A public report of the finding would be issued.

X. – CONTINUED

- If the COE found that a violation occurred, the penalty would include a public reprimand, a fine of up to \$500 per violation, or both.
- If a violation was not supported by clear and convincing evidence, the case would be dismissed, and a public report of the findings would be issued based on competent, substantial evidence in the record.
- The COE would publish its public report at the end of the public hearing unless Mr. Quinlan and Mr. Davis submitted written proposed public reports.
- The proposed public reports should be submitted within 12 months of the June 28, 2016 filing of the complaint unless extended by the COE for good cause.

Mark Bannon, COE Executive Director, read the clear and convincing evidence standard:

In order to find that Respondent has committed a violation of the Palm Beach County Code of Ethics, the Commission must find by clear and convincing evidence, based on competent substantial evidence in the record, that a violation was committed by Respondent.

The clear and convincing evidence standard is an “intermediate” standard of proof, and requires *“evidence indicating that the thing to be proved is highly probable or reasonably certain.”*

The Florida Supreme Court has held that clear and convincing evidence requires, *“that the evidence submitted must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations to be established.”*

X. – CONTINUED

Commissioner Shullman stated that:

- The COE would determine two alleged violations of Section 2-443(a) and Section 2-443(b) of the Code of Ethics (Code).
- To find a violation of Section 2-443(a), the evidence must show that Mr. Hughes used his official position, or took some action, or influenced others to take an action to give a special financial benefit to himself or one of the persons or entities listed in Section 2-443(a).
- The Code defined a financial benefit as any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these or anything else of value.
- To find a violation of Section 2-443(b), the evidence must show that Mr. Hughes used his official position to corruptly secure a special privilege, benefit, or exemption for himself or for someone else.
- The Code defined “corruptly” as done with a wrongful intent and for the purpose of obtaining or receiving compensation for any benefit resulting from some act by the public employee, which was inconsistent with the proper performance of his public duties.

Mr. Quinlan stated the following during his opening statement:

- During the probable cause hearing, Mr. Hughes acknowledged that he used a County vehicle to drive to Ron Cheston Automotive (RCA).
 - Use of a County vehicle would be mentioned during the presentation of evidence regarding the allegation that Mr. Hughes improperly sought to reduce his auto repair cost by referring to his County position.
 - Mr. Davis indicated that the misuse of a County vehicle charge did not need to be proven.
- Evidence would establish that in discussing the auto repair and payment on June 22, 2017, Mr. Hughes referenced his County position with ERM and well field inspections, which could directly impact RCA.

X. – CONTINUED

- Ron Cheston Sr. said that he felt threatened and intimidated by Mr. Hughes' reference to his ERM position and the suggestion that it would be in his best interest to reduce or discount the auto repair cost.
- Mr. Hughes paid the auto repair bill on June 22, 2017, but Mr. Cheston Sr. immediately called the County to complain about the manner in which Mr. Hughes referenced his ERM position and his implication that there could be negative consequences if the discount was not provided.
- On June 23, 2017, Mr. Cheston Sr. and Ron Cheston Jr. provided statements to the OIG.
- The Chestons, Mr. Bates, Robert Robbins, ERM Director, and Ms. Irizarry would be called to testify.
- After presentation of evidence, it would be clear and convincing that Mr. Hughes violated Sections 2-443(a) and 2-443(b).

Mr. Davis stated the following during his opening statement:

- Mr. Hughes would admit to violating Section 2-443(a) so proving misuse of a County vehicle was unnecessary.
- A different version of the facts would be presented regarding a violation of Section 2-443(b).
 - Mr. Hughes made arrangements with RCA to repair possible fuel issues on his truck.
 - RCA called Mr. Hughes around June 19, 2015, stating that the repairs were completed, and Mr. Hughes arrived at RCA on June 22, 2015.
 - Mr. Hughes briefly spoke to Mr. Cheston Sr., walked outside to speak to Mr. Cheston Jr., and inspected the truck before paying the repair bill.

X. – CONTINUED

- Mr. Hughes mentioned to Mr. Cheston Jr. that he worked for ERM and with staff that handled oil fields and other environmental issues; however, Mr. Cheston Jr. may have misinterpreted the comment.
- Mr. Hughes went inside the RCA shop and questioned the fuel pump cost.
- Mr. Hughes eventually paid the bill, but at no time on June 22, 2015, did he mention a government discount or use his position to influence a discount.
- Mr. Hughes arranged to pick up his truck later and left in the County vehicle that he arrived in. At the end of the day, Mr. Hughes returned with his wife to pick up the truck.
- The truck stalled on the way home. Mr. Hughes called RCA, but it was closed.
- On June 23, 2015, Mr. Hughes arrived at RCA in a County vehicle and explained what happened to the truck.
- Mr. Cheston Sr. rudely responded. The evidence would show that Mr. Hughes did not mention a government discount or his ERM position to influence a discount.
- Mr. Cheston Sr. asked Mr. Hughes to return the truck. Mr. Hughes requested that the fuel pump be replaced.
- Mr. Cheston Sr. stated that the original fuel pump was considered used after installation. Mr. Hughes filed a credit card dispute stating that the services and goods were not provided.
- The evidence would show that a fuel pump was never installed in the truck and that on June 23, 2015, the Chestons initiated an OIG complaint.
- Clear and convincing evidence would not show that Mr. Hughes used his ERM position to influence any discount on his truck.

X. – CONTINUED

Mr. Quinlan clarified that Mr. Hughes' reference to his employment status to obtain a discount violated Sections 2-443(a) and 2-443(b). He added that Mr. Davis only conceded to the portion of Section 2-443(a) involving the misuse of a County vehicle.

(CLERK'S NOTE: Mr. Quinlan conducted direct examination of Mr. Cheston Sr.)

(CLERK'S NOTE: Mr. Davis conducted cross-examination of Mr. Cheston Sr.)

Mr. Quinlan stated that it was nearing the time when Mr. Bates would appear by telephone. He added that direct examination would take approximately three minutes and that there would be no exhibits.

Mr. Davis said that he would not object to Mr. Quinlan questioning Mr. Bates at this time.

Commissioner Shullman noted that Mr. Bates would appear by telephone due to a family medical emergency involving a minor.

Mr. Quinlan said that cross-examination could continue until Mr. Bates was available.

(CLERK'S NOTE: Mr. Davis continued cross-examination of Mr. Cheston Sr.)

Mr. Davis requested that Mr. Cheston Sr. remain until Mr. Bates testimony was concluded.

(CLERK'S NOTE: Mr. Quinlan conducted direct examination of Mr. Bates who appeared by telephone.)

(CLERK'S NOTE: Mr. Davis conducted cross-examination of Mr. Bates.)

(CLERK'S NOTE: Mr. Quinlan conducted redirect examination of Mr. Bates.)

(CLERK'S NOTE: Mr. Davis continued cross-examination of Mr. Cheston Sr.)

(CLERK'S NOTE: Mr. Quinlan conducted redirect examination of Mr. Cheston Sr.)

X. – CONTINUED

RECESS

At 11:51 a.m., Commissioner Shullman declared the meeting recessed.)

RECONVENE

At 11:58 a.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.

(CLERK'S NOTE: Mr. Quinlan conducted direct examination of Mr. Robbins.)

(CLERK'S NOTE: Mr. Davis conducted cross-examination of Mr. Robbins.)

(CLERK'S NOTE: Mr. Quinlan conducted redirect examination of Mr. Robbins.)

RECESS

At 12:27 p.m., Commissioner Shullman declared the meeting recessed.

RECONVENE

At 1:28 p.m., the meeting reconvened with Chair Kridel, Vice Chair Clevis Headley, and Commissioners Michael Loffredo, Judy Pierman, and Sarah Shullman present.

Mr. Quinlan stated that:

- Ron Cheston Jr. was unable to appear and testify at this time.
- If the hearing resumed on March 3, 2017, at 8:30 a.m., he and Mr. Davis could conclude at 11:30 a.m.
- Mr. Davis did not want Mr. Hughes to testify until Mr. Cheston Jr.'s testimony was completed.

Commissioner Shullman stated that resuming the hearing on March 6, 2017, at 10:00 a.m. would work best for everyone.

X. – CONTINUED

Mr. Quinlan said that he had no objections to Ms. Irizarry testifying before adjournment.

(CLERK'S NOTE: Mr. Davis conducted direct examination of Ms. Irizarry.)

XI. ADJOURNMENT

At 1:44 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair