

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

**MARCH 6, 2017
CONTINUATION OF THE MARCH 2, 2017 MEETING**

**MONDAY
10:05 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**

Commissioner Sarah Shullman requested that everyone turn off or silence their cell phones.

(CLERK'S NOTE: Continuation of item X. took place at this time.)

Patrick Quinlan, Commission on Ethics (COE) Volunteer Advocate, clarified that the thumb drive containing hard copies of COE exhibits was marked as Exhibit 31. The Office of Inspector General (OIG) report presented to the witnesses and the COE on March 2, 2017 was marked as Exhibit 32

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

(CLERK'S NOTE: Jeloni Davis, Counsel for Respondent Rowan Davis, conducted cross-examination of Mr. Cheston Jr.)

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

Mr. Quinlan said that he and Mr. Davis agreed that no additional evidence would be presented at this time but some may be offered during his cross-examination and rebuttal of Mr. Hughes and Abigail Irizarry, COE Investigator. He added that he had completed the presentation of his case.

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

(CLERK'S NOTE: Mr. Quinlan conducted cross-examination of Mr. Hughes.)

RECESS

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

RECONVENE

At 12:41 p.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 continued cross-examination of Mr. Hughes.)

X. – CONTINUED

(CLERK'S NOTE: Mr. Davis conducted redirect examination of Mr. Hughes.)

RECESS

At 12:45 p.m., Commissioner Shullman declared the meeting recessed.

RECONVENE

At 1:33 p.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. Davis conducted direct examination of Keith Colombo (phonetic).)

Mr. Davis stated that he had completed the presentation of his case.

Mr. Quinlan stated the following during his closing argument:

- Before the work began, Mr. Cheston Sr. informed Mr. Hughes that there would be a \$175 diagnostic charge.
- Mr. Hughes was charged \$2,762 for the auto part, which was less than the \$2,909 list price indicated on Exhibit 33.
- Mr. Cheston Sr. testified that the total auto repair of \$3,622.01 was described to Mr. Hughes before the work was performed.
- When Mr. Hughes arrived on June 22, 2015, to pay for the auto repair, he referenced his County job and stated that it would be in Mr. Cheston Sr.'s best interest to give him a discount.
- Mr. Cheston Sr. obtained a receipt for the fuel pump that Mr. Hughes accused him of either not installing or installing a lower quality.
- Daniel Bates, Environmental Resources Management (ERM) Deputy Director, testified that Mr. Hughes told him that he had asked Mr. Cheston Sr. about a government discount for the auto repair.

X. – CONTINUED

- Robert Robbins, ERM Director, testified that Mr. Bates told him about his conversation with Mr. Hughes and that he also had a similar conversation with Mr. Hughes.
- Mr. Cheston Jr. testified that Mr. Hughes referenced his employment status and that when he spoke to Mr. Cheston Sr., he realized that Mr. Hughes was using his employment status to leverage a reduction in the auto repair.
- Mr. Hughes testified that:
 - He acknowledged mentioning fuel stations and well field inspections but did not state that his job involved climate change matters.
 - The word, “discount” never came up when talking to the Chestons, despite testimony to the contrary.
 - He drove his Lexus to Ron Cheston Automotive (RCA) on June 25, 2015, but it was on June 23, 2015 that he drove the County vehicle.
 - He drove the County vehicle to RCA after attending a County meeting but later admitted to using the County vehicle entirely for personal use on June 22, 2015, and June 23, 2015.
- The case rested on Mr. Hughes’ credibility and the fact that he only told the truth to Mr. Bates, Mr. Robbins, and the OIG investigators when confronted with the evidence.
- Testimony proved that Mr. Cheston Sr.:
 - provided Mr. Hughes with a quote;
 - made the auto repair that he charged Mr. Hughes for; and
 - did not file a false complaint in response to the credit card dispute initiated by Mr. Hughes.

X. – CONTINUED

- Considering the testimony of Mr. Hughes, the four witnesses, and 33 exhibits, Mr. Hughes should be found in violation of Section 2-443(a) for using a County vehicle for personal use, which he now admitted, and Section 2-443(b) for referencing his employment to obtain a financial benefit for himself.

Mr. Davis stated the following during his closing argument:

- Mr. Quinlan did not meet his burden of proof regarding Section 2-443(b).
- He conceded to a violation of Section 2-443(a) since Mr. Hughes admitted in a sworn statement to Ms. Irizarry that he drove a County vehicle to RCA.
- Registration and pictures of the truck were produced on March 2, 2017; however, Mr. Quinlan did not produce an Advance Auto Parts receipt until today.
 - It was disingenuous of Mr. Quinlan to equate that both scenarios regarding production of documents were handled in the same manner.
 - Mr. Hughes' defense was based on sending a subpoena duces tecum for production of documents to the Cheston's attorney, Allen Belluccio and to Napleton Dodge.
 - Mr. Belluccio and Napleton Dodge provided a written response to the subpoena duces tecum for production of documents.
 - The Advance Auto Parts receipt was not produced until rigorous cross-examination of Mr. Cheston Sr. on March 2, 2017.
- The case revolved around contradictions and a lack of communication between Mr. Hughes and Mr. Cheston Sr.
- Mr. Robbins and Mr. Bates testified that Mr. Hughes' work integrity was exemplary until he used the County vehicle for personal use.

X. – CONTINUED

- Mr. Hughes would never use his position to gain a \$400 discount for what was essentially a hobby truck.
- Mr. Colombo testified about Mr. Hughes' work integrity.
- Using a County vehicle for personal use could be equated to jaywalking or speeding because everyone engaged in those types of actions at some point.
- Asking for a discount was not unethical, regardless of whether or not Mr. Hughes requested one.
- There was no clear and convincing evidence that Mr. Hughes used his position to gain a favor.
- There was no June 22, 2015 video surveillance from RCA because the only incident that occurred was Mr. Hughes paying for his auto repair.
- The June 23, 2015 video did not show Mr. Cheston Sr. screaming and walking out on Mr. Hughes because it was cut and pasted.
- He was confident that the COE would find that his client did not abuse his authority regarding Section 2-443(b).

Mr. Quinlan stated the following during his rebuttal:

- He was offended that the word "disingenuous" was used to personally describe him.
- When he received the Advance Auto Parts receipt on March 2, 2016, it was immediately provided to Mr. Davis.
- Minor discrepancies about the events were reasonable and to be expected given that the Chestons had testified multiple times.
- Testimony established that a June 22, 2017 video from RCA existed, but it was not produced during the investigation.

X. – CONTINUED

- Mr. Cheston Sr. produced the Advance Auto Parts receipt.
- Mr. Hughes said under oath that the Chestons, Mr. Robbins, and Mr. Bates were lying.
- Mr. Robbins terminated Mr. Hughes when he concluded that he falsified logs to use County vehicles for personal use and violated the Palm Beach County Merit Rules 7.02.D.(21) and 7.02.D(32).
- He requested that the COE find Mr. Hughes in violation of Sections 2-443(a) and 2-443(b).

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.*” *Black’s Law Dictionary, 7th Edition.*

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.*” *In Re: Davey, 645 So. 2d 398, 404 (Fla 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).*

(CLERK’S NOTE: The clerk added the language as printed in the Clear and Convincing Evidence Standard.)

X. – CONTINUED

Commissioner Shullman said that:

- Various charges were discussed during the hearing.
- The COE would only focus on the alleged use of an official position to obtain a discount.
- Two sections of the Palm Beach County Code of Ethics (Code) were before the COE members, and a finding must be made on each charge individually.
- A violation of Section 2-443(a)(1) required that the COE:

find by clear and convincing evidence based on competent substantial evidence in the record, that Respondent used his official position or office to take some action, or influence others to take some action, in a manner which he knew or should have known with the exercise of reasonable care, would result in a special financial benefit, not shared with similarly situated members of the general public, for himself.

- A violation of Section 2-443(b) required that the COE:

find by clear and convincing evidence based on competent substantial evidence in the record, that Respondent used his official position or office, or any property or resource within his trust, to corruptly secure or attempt to secure, some special privilege, benefit, or exemption for himself. For this subsection, the term “corruptly” means done with wrongful intent and for the purpose of obtaining any benefit resulting from some act omission of the Respondent which is inconsistent with the proper performance of his public duties.

If the Commission finds that Respondent has violated either or both provisions of the Code of Ethics, they must also make a finding of whether any violation was intentional or unintentional.

X. – CONTINUED

Chair Michael Kridel said that:

- The Advance Auto Parts receipt contained a June 16, 2015 “estimated time of arrival” date yet the document was not made available until this week.
- The receipt contained a fax date of March 2, 2017.
- The RCA estimate was problematic because the signature date was the same date that the vehicle was picked up.
- The vehicle’s description was problematic.
 - The vehicle appeared to be in reasonably good shape from the photographs.
 - He never heard clarification as to whether that was the way it looked now or the day that it was at the shop.
- Miscommunication contributed to issues between the parties.
- It was not illegal to request a discount; however, it should be evaluated by how and when it was asked.
- The fact that Mr. Hughes admitted to using a County vehicle for personal use to some extent spoke to his credibility.
- Part of Mr. Cheston Sr.’s testimony created more questions than answers.
- Mr. Hughes could have determined if a different fuel pump was installed by physically examining it.
- Late introduction of the Advance Auto Parts receipt did not discount that the work was timely performed.

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X. – CONTINUED

Vice Chair Clevis Headley said that:

- The RCA estimate and Mr. Cheston Sr.'s testimony elicited some crucial facts, including:
 - Mr. Hughes said that he would consider the estimate, and he called back to approve the diagnostic test.
 - A diagnostic test was performed, a quote was provided, and Mr. Hughes called Mr. Cheston Sr. to proceed with the auto repair.
 - Estimates were almost always requested, and no auto mechanic would perform work without first receiving approval.
- The Chestons' testimony would be questionable without the Advance Auto Parts receipt.
- Something must have happened on June 22, 2015 that led Mr. Cheston Sr. to call the OIG and schedule an interview on June 23, 2015.
- Mr. Bates and Mr. Robbins testified that Mr. Hughes was a good employee and an excellent coworker and that he referenced his request for a government discount.
- It was not unethical to inquire about a discount, but discussing it raised some questions.
- It appeared that Mr. Hughes had difficulty being consistent and remembering specifics about the case.

Commissioner Michael Loffredo said that:

- Miscommunication was the significant issue involving the case.
- Perjury should be considered when witnesses testified that conversations never occurred when recorded sworn testimony proved otherwise.
- He did not believe that the Chestons defrauded Mr. Hughes.

X. – CONTINUED

Commissioner Judy Pierman stated that:

- She agreed that a lack of communication existed between the Chestons and Mr. Hughes.
- Mr. Hughes surreptitiously used a County vehicle and was terminated.
- She was unsure whether Mr. Hughes' intent was to use his job for a financial gain.
- It was unclear whether Mr. Hughes asked the Chestons for a government discount.
 - It appeared that he asked his employer whether government discounts were permitted or whether it was ethical to ask for them.
 - Requesting a government discount was not unethical.

Commissioner Shullman said that:

- Mr. Hughes violated Sections 2-443(a) and 2-443(b) if he attempted or implied that he would use his County position to obtain a discount.
- The invoices from Napleton Dodge versus A-1 Cardone (phonetic) were side issues when applying the clear and convincing evidence standard.
- The Chestons provided continuous consistent statements to the OIG and the COE about what occurred the day of and the day after the incident.
- The prior written statements and current testimony of Mr. Robbins and Mr. Bates were consistent with one another and with Mr. Hughes that there were suggestions about a discount.
- Whether it was illegal or unethical to request a government discount was not the issue.
- Mr. Hughes testified that he never asked for a government discount, but his prior testimony indicated that he had.

X. – CONTINUED

- It was difficult to find Mr. Hughes' testimony credible because it changed frequently.
- Something must have happened for the Chestons to call five times to reach the OIG and the COE to provide their statements.
- Mr. Hughes' previous written statement that the Chestons noticed his County shirt and inquired about his position could be plausible, but it contradicted his testimony today.
- The June 22, 2015 surveillance video that was unavailable may have shown that Mr. Hughes wore a County-logo shirt, but he never testified to that.
- The Advance Auto Parts receipt indicated that the fuel injector pump was installed and no other credible evidence was produced to indicate otherwise.
- Mr. Hughes admitted that he showed one of the Chestons his business card with the County logo and drove to RCA in a County vehicle.
- It was highly probable that Mr. Hughes used his position to obtain a discount, but she was uncertain whether it was done corruptly with wrongful intent.

Chair Kridel said that:

- The threshold of finding that a violation occurred under Section 2-443(a)(1) was met by the testimony.
- A higher threshold was required to prove that a violation occurred under Section 2-443(b).
- Mr. Hughes contested the credit card charge three weeks after the vehicle was picked up and three weeks after the Chestons filed the OIG complaint. The motivation for contesting the credit card charge was to not pay the bill.

X. – CONTINUED

- The motivation for filing the OIG complaint was the Chestons' disappointment in their expectations of public servants.

Commissioner Headley said that the COE should consider whether Mr. Hughes notified Mr. Robbins and Mr. Bates of what took place after the incident or framed the incident to benefit himself.

Commissioner Loffredo reiterated his belief that Mr. Hughes perjured himself by testifying that certain statements were never made yet sworn statements from others proved otherwise.

Chair Kridel said that:

- There was a clear violation of Section 2-443(a)(1).
- He was not convinced that Mr. Hughes "corruptly" misused his official position under Section 2-443(b).
- He was uncertain whether a violation of Section 2-443(b) occurred because it was difficult to determine if Mr. Hughes' intentionally used his employment and his official position to obtain a financial benefit.

Commissioner Headley said that he was hesitant to state that Mr. Hughes "corruptly" misused his official position because Mr. Colombo, Mr. Robbins, and Mr. Bates testified to Mr. Hughes' good character.

Commissioner Loffredo stated that it would be difficult to determine wrongful intent.

Commissioner Pierman said that she was also concerned about making a finding of "corrupt" misuse of official position.

Commissioner Shullman said that:

- Wrongful intent would probably apply if Mr. Hughes suggested that there would be some kind of well field inspection that could negatively impact RCA.

X. – CONTINUED

- Misuse of public office was applicable based on clear and convincing evidence and the credible and consistent testimony of the witnesses.
- Subsections 2-443(a) and 2-443(b) would be voted on separately.
- If a violation was found, it must include whether it was intentional or unintentional.
- If a violation was found, the penalty could include a public reprimand, a fine of up to \$500 per violation, or both.

UPON CALL FOR A VOTE, the motion finding that the respondent violated Section 2-443(a)(1) of the Palm Beach County Code of Ethics carried 5-0.

UPON CALL FOR A VOTE, the motion finding that the violation of Section 2-443(a)(1) was intentional carried 3-2. Michael Kridel and Judy Pierman opposed.

UPON CALL FOR A VOTE, the motion finding that the violation of Section 2-443(a)(1) was unintentional FAILED 2-3. Clevis Headley, Michael Loffredo, and Sarah Shullman opposed.

UPON CALL FOR A VOTE, the motion finding that the respondent violated Section 2-443(b) of the Palm Beach County Code of Ethics FAILED 1-5. Michael Kridel, Michael Loffredo, Judy Pierman, and Sarah Shullman opposed.

Commissioner Shullman stated that given the vote, it was unnecessary to find that a violation of Section 2-443(b) was intentional or unintentional.

Commissioners Kridel and Headley stated that Mr. Hughes already lost his employment with the County, and a Letter of Reprimand was the most equitable approach.

Commissioner Loffredo stated that a monetary fine and a Letter of Reprimand should be made.

Commissioner Pierman recommended no monetary fine and a Letter of Reprimand.

X. – CONTINUED

Commissioner Shullman stated that a monetary fine and a public reprimand was necessary to deter future potential transgressions by public employees. She added that despite the findings, she believed that Mr. Hughes was not a bad person.

UPON CALL FOR A VOTE, the motion finding that the respondent should receive a public reprimand carried 5-0.

UPON CALL FOR A VOTE, the motion finding that the respondent should receive a public fine of up to \$500 FAILED 2-3. Michael Kridel, Clevis Headley, and Judy Pierman opposed.

Commissioner Shullman announced that the penalty would be a public reprimand.

Gina Levesque, COE Intake and Compliance Manager, stated that draft copies of the Public Report and Final Order and a Letter of Reprimand would be distributed to the COE members.

Mr. Bannon clarified that the COE could accept the draft copies or allow Mr. Quinlan and Mr. Davis to submit their written proposals.

Commissioner Kridel said that one of the “intentional/unintentional” variables should be removed from the Public Report and Final Order.

Mr. Bannon said that the dollar fine would be removed from the second page.

Commissioner Pierman said that she was uncertain whether the statement, “Mr. Hughes said he was the head of the Palm Beach County Inspectors,” in the Letter of Reprimand was accurately proven.

Commissioner Kridel said that he agreed with Commissioner Pierman and added that:

- He did not recall that use of the word “threatened” during the hearing was as clear and ominous as it was in the Letter of Reprimand.
- He believed that use of the word “threatened” was insinuated or intimidated.

X. – CONTINUED

Mr. Quinlan and Mr. Davis said that they agreed to changing the intentional/unintentional variable and removing the dollar fine in the Public Report and Final Order.

UPON CALL FOR A VOTE, the motion to approve the Public Report and Final Order as amended carried 5-0.

Commissioner Shullman stated that Commissioner Pierman expressed concern about the Letter of Reprimand sentence that began, “When the business owner refused to provide a discount...”

Mr. Davis suggested eliminating the sentence.

Mr. Quinlan suggested rewording the sentence to state that Mr. Hughes undertook action that was perceived or suggested as a threat rather than deleting the entire sentence.

Commissioner Kridel said that the paragraph should refer to Mr. Hughes’ “allusion of representation” as well as the consequences for failure to get a discount.

Commissioner Shullman suggested incorporating language from the Code:

When the business owner refused to provide a discount, Mr. Hughes used his official position in a manner which he knew or should have known would result in a special financial benefit.

Mr. Quinlan suggested the language, “Referred to his official position.”

Mr. Kridel and Mr. Davis said that they agreed with the revisions.

Commissioner Shullman read the revised language as follows:

...referred to his official position in a manner in which he knew or should have known would result in a special financial benefit for himself.

UPON CALL FOR A VOTE, the motion to approve the Letter of Reprimand as amended was carried 5-0.

X. – CONTINUED

Mr. Bannon stated that the Public Report and Final Order and the Letter of Reprimand could be published once they were printed, and he thanked everyone who participated in the public hearing.

Commissioner Shullman read the following Public Report and Final Order:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on July 1, 2016, alleging possible ethics violations involving Respondent, Rowan Hughes, a former Palm Beach County employee.

The complaint alleges two Palm Beach County Code of Ethics violations involving misuse of official position and corrupt misuse of office.

County 1 alleges that on or about June 22, 2015, Respondent attempted to use his official position to receive a discount for the repair of his personal vehicle, in violation of Article XIII, Section 2-443(a), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics. County 2 alleges that on or about June 22, 2015, Respondent attempted to corruptly secure a special privilege, privilege, benefit, or exemption for himself with wrongful intent, in a manner inconsistent with a proper performance of his public duties, in violation of Article XIII, Section 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

On July 1, 2016, the complaint was determined by staff to be LEGALLY SUFFICIENT. On November 3, 2016, in executive session, the COE found PROBABLE CAUSE to believe a violation may have occurred and set the matter for final hearing as to the following alleged violations.

(This space intentionally left blank.)

X. – CONTINUED

On March 2, 2017, the Commission began the final hearing in public session and concluded the proceeding on March 6, 2017. The Commission heard oral arguments from the Advocate and the Respondent's attorney, listened to and reviewed witness testimony, and reviewed documentary evidence. The Commission concluded that there is clear and convincing evidence to conclude that Respondent violated County 1: §2-443(a), *Misuse of public office or employment*, Pursuant to Commission on Ethics Ordinance §2-260.1, *Public hearing procedures*, the Commission finds that the violation in Count 1 was intentional. The Commission further determined that there is not clear and convincing evidence to conclude that Respondent violated County 2: §2-443(b), *Corrupt misuse of official position*, and it was dismissed.

Therefore, it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon the issuance of a letter of reprimand for County 1: §2-443(a), *Misuse of public office or employment*.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this 6th day of March, 2017.

By: Sarah L. Shullman, Presiding Commissioner

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order.)

Mr. Bannon stated that the Letter of Reprimand would be published later on the COE's Web site.

Mr. Quinlan stated that he had no objections.

Commissioner Shullman said that she would turn her position over to Chair Kridel.

XI. ADJOURNMENT

At 3:40 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice-Chair