

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

OCTOBER 12, 2017

**THURSDAY
1:31 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

Vice Chair Clevis Headley requested that everyone silence their cell phones.

II. ROLL CALL

MEMBERS:

Michael S. Kridel, Chair – Absent
Clevis Headley, Vice Chair
Bryan Kummerlen
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 – None

IV. APPROVAL OF MINUTES FROM AUGUST 3, 2017

MOTION to approve the August 3, 2017 minutes. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 4-0. Michael Kridel absent.

V. STATUS CHECK RE: FINAL HEARING C16-011

John Cleary, Voluntary Advocate, said that a negotiated settlement was reached with Representative Al Jacquet and his counsel. He added that the Letter of Reprimand stated that Mr. Jacquet violated 2 sections of the Palm Beach County Code of Ethics (Code) and that a \$150 fine per violation was issued.

J.C. Planas, Representative Jacquet's counsel, said that he and his client agreed to the settlement, and he provided the COE with a signed agreement and a money order for the fines.

Commissioner Sarah Shullman said that a determination should be made whether violating Sections 2-443(a) and 2-443(b) of the Code was intentional or unintentional.

Mr. Planas recommended finding the violations unintentional because there was significant miscommunication among the parties involved in the matter.

Mr. Cleary stated that the violations should be found to be intentional.

Mark Bannon, COE Executive Director, said that the COE's determination should be based on the violations and not on Mr. Jacquet's actions.

Commissioner Bryan Kummerlen stated that Mr. Jacquet's actions were intentional, but the Code violation was unintentional.

Vice Chair Clevis Headley said that if commissioners received prior ethics training, they would have known that the Code applied.

Mr. Planas responded that people were often unaware that their actions violated a particular ethics law. He added that Mr. Jacquet accepted responsibility for his actions and that he should be afforded some leniency.

Commissioner Judy Pierman said that Mr. Jacquet may have reconsidered his actions had he known about the consequences and that she believed that the violations were unintentional.

V. – CONTINUED

Christie Kelley, COE General Counsel, said that for settlement purposes, the COE was required to make a determination of intentional or unintentional.

Mr. Bannon noted that a finding of intentional or unintentional would not change the \$150 fine per violation.

Commissioner Shullman said that Mr. Jacquet's actions were probably intentional, but she did not believe that he intentionally violated the Code.

MOTION to approve finding that Count 1 of C16-011 was unintentional. Motion by Bryan Kummerlen, seconded by Judy Pierman, and carried 3-1. Clevis Headley abstaining and Michael Kridel absent.

MOTION to approve finding that Count 2 of C16-011 was unintentional. Motion by Bryan Kummerlen, seconded by Judy Pierman, and carried 3-1. Clevis Headley abstaining and Michael Kridel absent.

MOTION to accept the negotiated settled as presented and signed. Motion by Judy Pierman, seconded by Bryan Kummerlen, and carried 4-0. Michael Kridel absent.

MOTION to accept the Public Report and Final Order as revised. Motion by Judy Pierman, seconded by Bryan Kummerlen, and carried 4-0. Michael Kridel absent.

MOTION to accept the Letter of Reprimand. Motion by Judy Pierman, seconded by Clevis Headley, and carried 4-0. Michael Kridel absent.

MOTION to accept the Order. Motion by Clevis Headley, seconded by Judy Pierman, and carried 4-0. Michael Kridel absent.

Commissioner Pierman 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 September 12, 2016, alleging possible ethics violations involving Respondent, Alson Jacquet, former Vice Mayor of the City of Delray Beach.

V. – CONTINUED

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

Count 1 alleges that on or about April 5, 2016, Respondent violated Article XIII, Section 2-443(a), *Misuse of public office or employment*, of the Palm Beach County Code of Ethics by using his official position as the Vice Mayor for the City of Delray Beach to give a special financial benefit to himself by having his parking citation voided by the Delray Beach Police Department. Count 2 alleges that on or about April 5, 2016, Respondent attempted to corruptly secure a special 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 September 12, 2016, the complaint was determined by staff to be LEGALLY SUFFICIENT. On June 1, 2017, in executive session, the COE found PROBABLE CAUSE to believe a violation may have occurred, and the matter was to be scheduled for a final public hearing.

On October 12, 2017, RESPONDENT and ADVOCATE submitted a NEGOTIATED SETTLEMENT including a LETTER OF REPRIMAND to the COE for approval. RESPONDENT stipulates to the facts and circumstances as contained in the aforementioned LETTER OF REPRIMAND. According to the NEGOTIATED SETTLEMENT and based on the facts as set forth in the LETTER OF REPRIMAND, RESPONDENT admits to the allegations contained in counts one and two of the COMPLAINT that he violated §2-443(a) and §2-443(b) of the Palm Beach County Code of Ethics. RESPONDENT agrees to accept a LETTER OF REPRIMAND and to pay a total of three hundred (\$300) dollars in fines.

(This space intentionally left blank.)

V. – CONTINUED

Pursuant to Commission on Ethics Ordinance §2-260.1, *Public hearing procedures*, the Commission finds that the violation in Count 1 was unintentional and the violation in Count 2 was unintentional. As to Counts 1 and 2, the Commission assess a total fine of three hundred (\$300) dollars, and the RESPONDENT has been issued a LETTER OF REPRIMAND.

Therefore, it is:

ORDERED AND ADJUDGED THAT this matter is concluded upon the issuance of a LETTER OF REPRIMAND for Count 1: §2-443(a), *Misuse of public office or employment*, and Count 2: §2-443(b), *Corrupt misuse of official position*, and payment of a three hundred (\$300) dollar fine.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on this 12th day of October, 2017.

By: Sarah L. Shullman, Presiding Commissioner

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

MOTION to accept the Public Report and Final Order as amended to include the corrections to the scrivener's errors. Motion by Clevis Headley.

Mr. Jacquet said that he wanted to ensure that the language referencing wrongful intent was accurate and was agreed to by Mr. Planas, Mr. Cleary, and the COE.

Mr. Planas clarified that the allegation mentioned wrongful intent, but the conclusion stated that the violation was unintentional.

MOTION SECONDED by Judy Pierman, and upon call for a vote, the motion carried 4-0. Michael Kridel absent.

RECESS

At 1:57 p.m., the vice chair declared the meeting recessed for an executive session

VI. EXECUTIVE SESSION(S)

RECONVENE

At 3:29 p.m., the meeting reconvened with Vice Chair Clevis Headley, and Commissioners Bryan Kummerlen, Judy Pierman, and Sarah Shullman present.

VI.a. C15-022

Commissioner Shullman read the following Public Report and Final Order of Dismissal as discussed during the executive session:

Complainant, Steven P. Cullen, former Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on October 2, 2015, alleging that Respondent, Cesar Irizarry, a former City of Delray Beach employee, violated §2-443(b) and §2-443(d) of the Palm Beach County Code of Ethics by improperly using his official position as a city employee to corruptly secure a special benefit for himself and others and by entering into prohibited contracts with the City of Delray Beach through his outside business.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On October 12, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and Respondent, the Commission found that probable cause existed but dismissed the complaint because the public interest would not be served by proceeding further pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

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VI.a. – CONTINUED

Although probable cause exists, Respondent was arrested and charged with Grand Theft over \$20,000 and Organized Scheme to Defraud (\$20,000 or more) (criminal case number 2016CF001522B02) regarding the same allegations. Pursuant to a negotiated settlement, the Respondent pled guilty/best interest to a lesser-included charge of Grand Theft for Count 1, and the State entered a Nolle Prose for Count 2, Organized Scheme to Defraud. Adjudication was withheld, and Respondent was sentenced to 3 years probation, completion of a theft abatement course, 50 hours community service, and restitution payable to the City for \$44,481.33

Due to the sanctions levied by a criminal court against Respondent regarding the same allegations, Respondent lost his employment with the City, has been ordered to pay restitution to the City, and has had conditions placed on him that exceed any penalty the COE could impose to ensure this action does not occur again, the public interest would not be served by proceeding further.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Cesar Irizarry, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 12, 2017.

By: Clevis Headley, Vice Chair

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

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VI. – CONTINUED

VI.b. C16-005

Commissioner Shullman read the following Public Report and Final Order of Dismissal as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on April 21, 2016, alleging that Respondent, Keith Heasley, a former Village of Palm Springs employee, violated §2-443(a) and §2-443(b) of the Palm Beach Code of Ethics by improperly using his official position as a Village mechanic to give a special financial benefit to himself and corruptly securing a special benefit for himself by purchasing four tires on his Village-issued credit card and falsifying a purchase order to conceal the purchase.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On October 12, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate, the Commission found that probable cause existed but dismissed the complaint because the public interest would not be served by proceeding further, pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Although probable cause exists, Respondent was also arrested and charged with Official Misconduct (criminal case number 2015CF012334AXX) regarding the same allegations. Pursuant to a plea negotiation, Respondent entered into a pre-trial intervention (PTI) program and was terminated from his position as a mechanic with the Village. The plea to enter the PTI program was an agreement between the State Attorney's Office and the Defendant (Respondent), that allowed the Respondent to have the criminal charges dismissed after an agreed upon period of time if the Respondent completed all of the conditions in the agreement. Additionally, the agreement had to be approved by the Judge.

VI.b. – CONTINUED

The special conditions of the PTI included a term of two-years in PTI, with an automatic termination after one year if all conditions are completed and no violations, 50 hours of community service, a theft abatement course, relinquish employment with the Village of Palm Springs, restitution payable to the Village in the amount of \$503.90, and not applying for or seeking employment in the public sector for the term of the PTI. Additionally, Respondent is also required to follow up with a probation officer monthly.

Due to the pre-trial intervention sanctions levied by a criminal court against the Respondent regarding the same allegations, Respondent lost his employment with the Village of Palm Springs, has been ordered to pay restitution to the Village, and has had conditions placed on him that exceed any penalty the COE could impose to ensure this action does not occur again, and the COE finds that the public interest would not be served by proceeding further.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Keith Heasley, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on October 12, 2017.

By: Clevis Headley, Vice Chair

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

VII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VII.a. RQO 17-017

VII.b. RQO 17-018

VII.c. RQO 17-019

VII.d. RQO 17-020

VIII. ITEMS PULLED FROM CONSENT AGENDA – None

MOTION to approve the consent agenda. Motion by Judy Pierman, seconded by Bryan Kummerlen, and carried 4-0. Michael Kridel absent.

IX. PROPOSED ADVISORY OPINIONS

IX.a. RQO 17-015 (Discussion only)

Mary Beth Hague, commissioner for the Town of Jupiter (Jupiter) Planning and Zoning Commission (P&Z Commission), said that:

- The August 8, 2017 P&Z Commission agenda contained amendments to the 1116 Love Street project.
- The amendments were not considered part of a quasi-judicial proceeding, and she and Ms. Schneider were not acting as judges during the meeting
- She and P&Z Commissioner Cheryl Schneider requested tabling the agenda item because they had not yet received the COE advisory opinion regarding a potential conflict of interest.
- The P&Z Commission approved the amendments, and she and Ms. Schneider recused themselves from voting.
- She and Ms. Schneider did not serve on the P&Z Commission during fundraising efforts through the GoFundMe Web page to proceed with their lawsuit.

Ms. Schneider said that the request for an advisory opinion dealt with whether an applicant, who was negatively impacted by the opinions of Jupiter P&Z commissioners, could allege that those commissioners had a conflict of interest.

Darren Leiser, representing the applicant, said that:

- Ms. Hague, Ms. Schneider, and the other petitioners' lawsuit against Jupiter was still pending.
- Approval of the project could be overturned, and the applicant could return to the Jupiter P&Z with a new project for the same property.

IX.a. – CONTINUED

- On August 9, 2017, the petitioner's Motion for a Rehearing on the Petition for Writ of Certiorari was denied.
- On August 27, 2017, one of the petitioners, Theresa Grooms, started a GoFundMe Web page to fund appeal efforts.
- On September 15, 2017, the Petition for Writ of Certiorari was filed in the Fourth District Court of Appeal.
- He believed that the members of Citizen Owners of Love Street Inc. as well as Ms. Hague and Ms. Schneider were receiving a special financial benefit by advocating against the project and participating in a lawsuit without paying for legal representation.
- An opinion issuing the finding that a conflict of interest existed was requested.

Commissioners Pierman and Kummerlen said that it was difficult to determine the special benefit Ms. Hague and Ms. Schneider would gain by pursuing their lawsuit.

Commissioner Shullman said that:

- The State of Florida (State) COE broadly interpreted a special benefit as any type of benefit while the COE's interpretation stated that it must be a financial benefit.
- The financial benefit related to the misuse of public office would trigger the disclosure of a voting conflict on the applicant's amendments and a recusal from voting.
- The COE should consider whether a financial benefit existed and whether there was any special benefit due to corrupt misuse of an official position, which would not trigger the disclosure of a voting conflict.

Mr. Bannon clarified that corrupt misuse of an official position would not invoke the voting conflict section of the Code, but the action of voting could be considered a corrupt misuse.

IX.a. – CONTINUED

Commissioner Shullman said that the following should also be considered:

- Whether voting on the amendments could trigger disclosure of a voting conflict or a violation.
- Whether tabling the vote to seek an opinion or tabling a vote in the future could create any issues.
- The advisory opinion should focus on Ms. Hague's and Ms. Schneider's future actions and not on what happened in the past.
- It was probably remote and speculative to assume that voting on the amendments would generate money for their lawsuit or any other financial benefit.

Mr. Bannon said that:

- Tabling an item or requesting to table it was not an attempt to influence a decision on the item but to postpone deciding on the item.
- How a developer was affected by tabling an item was immaterial to whether someone financially or corruptly benefitted by voting to table.
- Under certain circumstances, a vote to table an item could be considered a corrupt misuse of an official position if someone received a special benefit, with or without a financial component, that they were not entitled to.
- The corrupt misuse would be an action that was inconsistent with the proper performance of his or her public duties.

Commissioner Shullman said that she did not want to eliminate the possibility that a vote to table an item could result in a direct financial benefit.

Mr. Bannon stated that the commissioners could send comments to him directly, but they could not discuss the matter among themselves.

X. EXECUTIVE DIRECTOR COMMENTS

X.a.

DISCUSSED: Hurricane Irma.

Mr. Bannon said that during Hurricane Irma, staff worked at various hurricane shelters and at the Emergency Operations Center. He added that Ms. Levesque was deployed to the Florida Keys to work with the Southeast Florida All Hazard Incident Management team and would be working in the City of Miami to help with evacuees from Puerto Rico.

X.b.

DISCUSSED: COE Training.

Mr. Bannon said that he and Ms. Kelley continued to provide COE training to County and municipal officials and employees. He added that on October 18, 2017 he and the City of West Palm Beach ethics officer for the League of Cities would hold a State and County ethics training session.

X.c.

DISCUSSED: Palm Beach County Ethics Partnership Council (PBCEPC).

Mr. Bannon stated that the PBCEPC would lose its funding in January, and that a meeting was held on September 28, 2017 to discuss potential funding options. He added that a meet-and-greet session was scheduled with Dr. Peter Cruz, executive director of the Public Ethics Academy for Florida Atlantic University, to discuss ethics issues.

XI. COMMISSIONER COMMENTS – None

XII. PUBLIC COMMENTS – None

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XIII. ADJOURNMENT

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

APPROVED:



MICHAEL HRIDEL (Chair/Vice Chair)