



Honesty - Integrity - Character

Palm Beach County
Commission on Ethics
300 North Dixie Highway
West Palm Beach, FL 33401
561.355.1915
FAX: 561.355.1904
Hotline: 877.766.5920
E-mail: ethics@pbcgov.org

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

Executive Director
Mark E. Bannon

Intake and Compliance Manager
Gina A. Levesque

General Counsel
Christie E. Kelley

Chief Investigator
Anthony C. Bennett

Investigator
Abigail Irizarry

Agenda

January 12, 2017 – 2:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

STATUS CHECK DISCOVERY HEARING

- I. Call to Order (Commissioner Sarah L. Shullman presiding*)
- II. Roll Call
- III. Introductory Remarks
- IV. C16-006 Status
- V. Scheduling (Dates)
 - a. Final Hearing
 - b. Final Witness and Exhibit List Due
 - c. Motions Due
 - d. Motion(s) Hearing
- VI. Rules for Final Hearing
- VII. Executive Director Comments
- VIII. Public Comments
- IX. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

*Pursuant to the Commission on Ethics Ordinance, Commissioner Sarah L. Shullman has been designated by the Chairperson of the Commission on Ethics to preside over all hearings concerning C16-006.

Commission on Ethics Rules prior to Final Public Hearing

1. The Commission on Ethics (COE) Chair or other COE Commissioner as designated by the COE Chair shall preside over all matters concerning the final public hearing, including any preconference hearings, rulings on motions submitted by any party, and whether the matter will be heard by the entire Commission, or by a panel of three (3) Commissioners selected by the presiding Commissioner. The decision of the presiding Commissioner on matters concerning all preliminary issues shall be final. *(COE Rule of Procedure 6.1 and 6.14)*
2. After a final public hearing has been ordered by the COE, and during the pendency of the final public hearing, all ex-parte communications between Commissioners and any party to this action concerning matters to be heard in the final public hearing is prohibited. This prohibition includes ex-parte communications between Commissioners and the COE Advocate, the Respondent and his or her attorney, and any witness to be called by any party. *(Section 2-260(k)(1), Commission on Ethics Ordinance, and COE Rule of Procedure 6.5)*
3. All motions must be made in writing, or made on the record at a hearing. This includes either the final public hearing, or any prehearing conference scheduled before the final public hearing. If made in writing prior to a scheduled prehearing conference, the presiding Commissioner may rule on said motion at a prehearing conference. *(Section 2-260(k), Commission on Ethics Ordinance and COE Rule of Procedure 6.11)*
 - a. Motions for disqualification of any Commissioner from the final public hearing for reasons of bias, prejudice or interest, shall be made by affidavit as soon as practical. The determination to disqualify any Commissioner from said hearing is the sole decision of the Commissioner whose disqualification is sought.
 - b. Any motion filed with the Commission shall include a statement of whether the party has conferred with the other party regarding the motion and shall state whether there is any objection to the motion. Other parties may file a written memorandum in opposition to any motion filed.
 - c. The original motion shall be filed with COE staff, and a copy served on all parties. COE staff shall forward a copy to the presiding Commissioner.
 - d. The presiding Commissioner may conduct such proceedings and make such orders as deemed necessary to dispose of motions filed, but is not required to hold a hearing in order to rule upon any motion filed.
4. Unless otherwise ordered by the presiding Commissioner, COE Advocate and Respondent, or attorney for Respondent shall exchange witness lists at least 10 days prior to the public hearing, with a copy given to the presiding Commissioner (via COE staff). Names and addresses of witnesses discovered subsequent to this exchange shall be disclosed to the other party and to the presiding Commissioner as soon as possible. Failure to timely disclose witnesses may result in the exclusion of their testimony from the public hearing. *(Section 2-260(k), Commission on Ethics Ordinance)*
5. COE staff will prepare and issue subpoenas for discovery, or to require the attendance of any witness for either Respondent or COE Advocate at their timely request. *(Section 2-260(h) & (i), Commission on Ethics Ordinance, and COE Rule of Procedure 6.7 and 6.8)*
 - a. Subpoenas requested by Respondent will be issued by COE staff, but must be served by Respondent or their designee. Subpoenas for the COE Advocate will be prepared and disseminated by COE staff.
6. The COE Advocate and the Respondent may enter into such negotiations concerning issues involving the final public hearing, and should resolve those issues that can be resolved prior to the final public hearing. Stipulations as to these issues may be submitted to the presiding Commissioner through COE staff prior to any prehearing conference, or the final public hearing.
7. The COE Advocate and Respondent may also enter into a proposed settlement agreement prior to the final public hearing. Upon notification of such a proposed settlement agreement, the presiding Commissioner shall continue the public hearing and direct COE staff to place the matter before the full Commission at the next regularly scheduled meeting for a decision by the COE as to whether to accept the proposed settlement agreement. *(COE Rule of Procedure 6.16)*
8. Notwithstanding any other provisions, the Commission on Ethics during or prior to conducting the final public hearing 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, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the Commission dismisses a complaint as provided in this subsection, the Commission shall issue a public report stating with particularity its reasons for the dismissal. *(Section 2-260.3, Commission on Ethics Ordinance and COE Rules of Procedure 6.16)*

Commission on Ethics Rules for Final Public Hearings

1. Final public hearing proceedings are less formal than actual court hearings and have a relaxed standard for evidence admission as discussed below. However, the highest degree of courtesy and professionalism is expected of all parties at a hearing. Promptness is important, and both parties shall be ready to present their witnesses and evidence when the final public hearing is opened by the presiding Commissioner.
2. The final public hearing proceedings shall be recorded by recording instruments or by a court reporter. Respondent may, at his or her own expense, provide a court reporter or recording instruments. The Commission may provide a court reporter to any proceeding conducted by the Commission. No transcript of the proceedings shall be prepared unless requested by the Commission conducting the public hearing, or by Respondent. If Respondent requests that a transcript be prepared by a court reporter, the Respondent shall pay the expense of transcription. If Respondent requests that the Commission prepare transcripts from recording instruments and the Commission grants such request, Respondent shall pay the Commission the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.4)*
3. COE Advocate shall present his/her opening statement first. Respondent or his/her attorney may then give an opening statement. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.1 and 7.2)*
4. The COE Advocate will then present his/her case, including any witnesses. Both parties may cross-examine opposing witnesses. Both parties may impeach witnesses regardless of which party first called the witness to testify. Respondent may then present his/her evidence and witnesses. Rebuttal evidence may be allowed at the discretion of the presiding Commissioner. Again, any witnesses not listed on a witness list provided to the opposing party and the presiding Commissioner may not be allowed to testify. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.3)*
5. Irrelevant and unduly repetitive evidence may be excluded at the discretion of the presiding Commissioner. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.3)*
6. Witness affidavits shall not be allowed into evidence when that person can be called to testify. However, this shall not preclude the admission of a deposition for any reason permissible in a court of law under the Florida Rules of Civil Procedure as discussed in Rule 1.330, *Use of Depositions in Court Proceedings*. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.3)*
7. Both COE Advocate and Respondent shall also have the opportunity to make a closing statement after presenting their case. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.1 and 7.2)*
8. All oral evidence (witness testimony) shall be made only on oath or affirmation. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.3)*
9. The final public hearing shall not be conducted according to the technical rules relating to witnesses and evidence. Any relevant evidence may be admitted in the final public hearing. 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 finding. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.3)*
10. Notwithstanding any other provisions, the Commission on Ethics conducting the final public hearing 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, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the Commission dismisses a complaint as provided in this subsection, the Commission shall issue a public report stating with particularity its reasons for the dismissal. *(Section 2-260.3, Commission on Ethics Ordinance, and COE Rules of Procedure 6.16)*
11. After the conclusion of the final public hearing, Respondent and COE Advocate may present written proposed public reports, within a time designated by the presiding Commissioner conducting the public hearing. If a proposed public report is filed by Respondent or COE Advocate, each proposed finding in the proposal that is rejected shall be accompanied by a statement summarizing the reasons for rejection. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 7.5)*
12. Upon completion of the final public hearing, the Commission shall make a finding and public report as to whether any provision within its jurisdiction has been violated. If the Commission finds, **by clear and convincing evidence, based upon competent substantial evidence in the record, that a violation has been committed**, the Commission shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The final order shall also include a determination of whether the violation was **intentional** or **unintentional**. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 8.1 and 8.2)*

13. The Commission shall, within twelve (12) months of the filing of a complaint, render a final order disposing of said complaint unless extended by the Commission for good cause. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 8.2)*
14. A finding by the Commission of a violation of the Palm Beach County Code of Ethics shall subject the person or entity to public reprimand, a fine of up to five hundred dollars (\$500), or both. The Commission may also order the person or entity to pay restitution when the person or entity or a third party has received a pecuniary benefit as a result of the person's violation. *(Section 2-448(b), Palm Beach County Code of Ethics, and COE Rules of Procedure 8.3)*
15. If a person fails to comply with an order issued by the Commission on Ethics, the Commission on Ethics on its own behalf may make application to any circuit court of this state which shall have jurisdiction to order the violator to comply with the order of the Commission on Ethics. Any violator who fails to obey the order may be punished by the court. *(Section 2-260.1, Commission on Ethics Ordinance, and COE Rules of Procedure 8.5)*
16. The Commission may in its discretion refer willful violations of Sections 2-443, 2-444(a), 2-444(b), 2-444(c), 2-444(e), or 2-447 of the Palm Beach County Code of Ethics to the state attorney. Pursuant to Florida Statutes, §125.69, a person who violates the sections of the article set forth in this section 2-448(d) shall be subject to prosecution in the name of the state in the same manner as first degree misdemeanors are prosecuted, and upon conviction, such person shall be punished by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed one (1) year, or both. *(Section 2-448(d), Palm Beach County Code of Ethics)*
17. Any final order of the Commission on Ethics may be appealed by filing a petition for writ of certiorari in the Fifteenth Judicial Circuit Court in and for Palm Beach County. The Commission shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure. A fee shall be charged by the Commission for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such fee may be waived by the executive director if the party requesting the record is indigent. Costs or fees may not be assessed against the Commission in any appeal from a final pursuant to this division. Unless specifically ordered by the Commission or by a court of competent jurisdiction, the commencement of an appeal does not suspend or stay a final order or advisory opinion of the Commission on Ethics. *(Section 2-260.10, Commission on Ethics Ordinance, and COE Rules of Procedure 9.1, 9.2 and 9.3)*