

## MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS

1. **CALL TO ORDER:** March 18, 2010, at 4:00 p.m., in the McEaddy Conference Room, 301 North Olive Avenue, 12<sup>th</sup> Floor, West Palm Beach, Florida.

- 1.A. **Roll Call**

Manuel Farach, Esq., Richman Greer, P.A.  
Dr. Robin Fiore, Ethics Professor, Florida Atlantic University (FAU)  
Ronald E. Harbison, Certified Public Accountant  
Bruce Reinhart, Esq., Former Assistant U.S. Attorney  
Edward Rodgers, Retired Circuit Judge and former City of Riviera Beach Councilman

**Support Staff and Others Present:**

David Baker, Ethics/IG Implementation Committee Chair  
Leonard Berger, Assistant County Attorney  
Joe Doucette, Office of Financial Management and Budget (OFMB),  
Budget Director  
Tammy Gray, Public Affairs Department Information Specialist  
Brad Merriman, Assistant County Administrator  
Heather Shirm, Public Affairs Department Web Design Coordinator  
Leilani M. Yan, Human Resources Department Recruitment and Selection  
Manager  
Julie Burns, Recording Clerk  
Barbara Strickland, Condensing Clerk

2. **BACKGROUND OF THE CREATION OF THE COMMISSION ON ETHICS (COE) – Brad Merriman/David Baker**

Judge Edward Rodgers referred COE members to the handouts distributed by Leilani M. Yan, Human Resources Department (Human Resources) recruitment and selection manager, which listed the applicants who had received the most votes. He requested that the members review the list and form opinions before today's meeting ended. He said that their opinions would be helpful toward choosing the applicants who would attend the next meeting, and for scheduling the amount of meeting time that would be required.

## 2. – CONTINUED

Brad Merriman, Assistant County Administrator, requested that the scheduled general discussion of the background and creation of the COE be tabled until David Baker, Ethics/IG Implementation Committee chair, arrived to make a presentation.

(CLERK'S NOTE: Mr. Baker joined the meeting.)

Mr. Baker stated the following:

- The County's ethics initiative group consisted of members representing the Economic Council of Palm Beach County, Inc.; the Business Forum of Palm Beach County; the Voters' Coalition; Leadership Palm Beach County; and himself.

(CLERK'S NOTE: Joe Doucette joined the meeting.)

- In the fall of 2008, work began on creating a draft to make changes to the County charter, in the form of charter amendments, for placement on the ballot in November 2010.
- The work undertaken applied values and principles in order to create an independent inspector general (IG) position and an ethics committee to enhance transparency in the conduct of County government, and to strengthen the County's ethics code beyond the State's requirements.
- The grand jury's report, "Investigation of Palm Beach County Governance and Public Corruption Issues," released May 21, 2009, confirmed the need for those values and principles. The first phase of the initiative process was adoption by the Board of County Commissioners (BCC) of three ordinances relating to the IG, the COE, and the stronger Code of Ethics (Code).
- Independence created within the IG position included broad power and authority, as demonstrated by the following components of the ordinance that established the County's Office of Inspector General (OIG):
  - Selection and retention of the IG by an independent group consisting of the COE, the State Attorney, and the Public Defender.

## 2. - CONTINUED

- o Establishment of a dedicated funding source;
  - o Authorization for the IG to issue subpoenas;
  - o Establishment of a complaint hotline; and
  - o Additional powers detailed in the ordinances creating the OIG and the COE.
- Transparency was enhanced with a Web site page specifically dedicated to ethics, with space available for audit reports, IG reports, and additional County information.
  - Additional comprehensive lobbying requirements were detailed in the ordinance that created the Code of Ethics (Code), which increased transparency.
  - Further transparency enhancements included clearer reporting requirements and gift prohibitions, clearer communications between bidders and the County during the procurement process, and a COE to enforce the rules.

Mr. Baker stated that ordinances applicable to the new responsibilities required that the COE, its executive director, and the IG to possess skills beyond those of ordinary citizens. He described the guidelines that were established by the initiative group for the appointment of the COE's executive director, which included that the appointee should be:

- A formal law enforcement official with experience in investigating white-collar crimes and public corruption;
- An attorney with experience in ethics regulations for public officials and employees;
- A faculty member who taught at an institution of higher education, preferably with experience in professional and legal ethics, or someone who had published and performed services in the field of professional and legal ethics;

## 2. – CONTINUED

- A Certified Public Accountant (CPA) with at least five years experience as a CPA with forensic audit expertise and experience as a former elected official for a governmental entity.

The executive director must be capable of assisting the COE in rendering advisory opinions, in enforcing the lobbying requirements, and in reviewing, investigating, hearing and deciding ethics complaints filed with the COE. Mr. Baker said.

In addition, Mr. Baker said that the IG must be experienced in law enforcement; be familiar with the judiciary and/or auditing; have handled complex investigations and be capable of working with others who performed similar tasks. The IG must have the ability to manage an office and also possess certain professional certifications as set forth in the ordinance, he stated.

Mr. Baker described the trait of independence as having the ability to resist the influence of others during the execution of fact-finding or decision-making responsibilities. Those could include groups that were appointed or enforced, the BCC, County staff, and anyone elected or employed by any entity that fell under the jurisdiction of the IG or the COE.

Mr. Baker said that there was no specific appellate right provision. Leonard Berger, Assistant County Attorney, commented that appeals from any court orders would go by a writ of certiorari to the appellate division of the Circuit Court.

Ronald Harbison said that as he reviewed the applications, he would have considered it helpful to have more job description language and a list of skills sets that were desired of applicants.

Mr. Berger stated the following:

- One of the five broad duties of the executive director and staff, as mentioned in the ordinance, was to prepare drafts of advisory opinions for the COE to approve at public hearings. Required skills were writing ability, excellent understanding of the Code, plus the ability to apply facts about a particular person to the Code consistently and fairly.

## 2. - CONTINUED

- Because the COE was responsible for developing training programs, the executive director would be responsible for selecting training entities, for developing materials personally, and for delivering them in a coordinated way to the County and to entities, such as vendors, that dealt with the County daily.
- The third job requirement, enforcement, was key because the executive director reviewed complaints that came in to ensure that they were minimally sufficient to move forward, and would present cases to the COE by acting as advocate or prosecutor

Dr. Fiore commented that it seemed that the IG would supervise the investigators. Mr. Berger replied that two parallel courses existed, and that sharing between the COE and the IG entities was envisioned as a method of controlling the costs of investigations. Manuel Farach, Esq., requested additional clarification of the roles of each entity.

Mr. Berger replied as follows:

- The IG would be in the same building as the COE but would have duties separate and apart from the COE. The IG would audit and investigate financial records, all transactional activities, and would publish reports.
- The IG would refer or direct instances of suspected Code abuse to the executive director and the COE.

Mr. Harbison said that it appeared that the State COE would conduct a preliminary investigation to determine probable cause prior to a full investigation.

Mr. Berger responded that the County IG's authority would be so broad as to deal with waste, mismanagement, inefficiencies, other matters that would neither touch nor concern the County COE. He said that when the IG discovered something deemed actionable by the COE, the item would be referred to its executive director. The Ethics/IG Selection Committee, he added, was the entity that hired the IG, that renewed contracts at four-year intervals, and would be involved with the IG removal process if needed.

## 2. - CONTINUED

Independence was ranked above accountability when the ordinances took shape, Mr. Berger said. The COE maintained the ability to initiate removal of the IG, he said, and that removal for cause was a tedious process to ensure independence.

Dr. Fiore observed that occasionally, certain investigations lasted for long periods of time without achieving resolution. She said that definitions of forward motion and standards of acceptability were needed. Mr. Berger responded that his recommendation, especially for the IG, would be that this group establish evaluation guidelines.

Bruce Reinhart, Esq., requested clarification of what was envisioned for the staffing component from the budget and drafting perspectives. Mr. Berger replied as follows:

- The County budgeted \$180,000 for start-up costs through the end of this fiscal year, September 30, 2010.
- The successful executive director candidate would need to be flexible and agile enough to handle multiple tasks that included personnel and management policy development; to complete coherent budget preparation and reporting processes, and to hire staff.
- A conservative vision would include the hiring of an executive director who would then hire a clerical staff member, and perhaps share an investigator, according to budget allowances.
- The role of advocate suggested that the candidate ought to be an attorney because abilities were needed to sift through facts for the purposes of drafting advisory opinions, and dealing with complaints as they occurred to ensure their legal sufficiency.
- The ordinance also called for someone who would serve as counsel to the COE for enforcement hearings, and a volunteer was not precluded.

Mr. Harbison commented that although someone might volunteer to act in that capacity, the role had been filled by the County Attorney's Office on other boards as their counselor. A potential for conflict of interest existed, he said, and an independent outside counselor would probably be preferable.

## 2. - CONTINUED

Mr. Berger mentioned that with the limited budget available, an executive director who was also an attorney could serve as advocate and save one position.

Mr. Harbison's added observation was that the public face of the COE on a day-to-day basis presumed some degree of ability for communication with the public. He said that the practicality of hiring a member of the Florida Bar would be helpful for presenting arguments in Circuit Court. Dr. Fiore stated her preference for considering out-of-state candidates who had no relationships with Floridians.

Mr. Reinhart queried whether non-attorney candidates would be disregarded for budgetary reasons. Mr. Berger responded that a budgetary issue would exist for at least the first six months, and that possibly the executive director would have leeway in hiring someone on a limited basis. Judge Rodgers said that adjustments would be made as the selection process continued.

Mr. Berger stated that budget discussion ability was number four on the list of executive director duties he had begun outlining earlier. The fifth and last duty, he said, was that, because the ordinance allowed the COE to enter into agreements with other governmental entities for services, the executive director would presumably negotiate contracts and interlocal agreements.

### 2.A. **Minutes of February 23, 2010, COE Meeting**

Judge Rodgers stated that by common consent, the reading of the minutes of the February 23, 2010, meeting was suspended until the next meeting.

### 3. **EXECUTIVE DIRECTOR RECRUITMENT STATUS UPDATES – Wayne Condry/Leilani Yan**

Ms. Yan said that responses submitted by COE members were summarized on the handouts she had distributed. They were listed according to the numbers of votes that any candidate had received as being in any member's top group, and numbers in those groups varied from five to nine people, she said.

### 3. – CONTINUED

Dr. Fiore noted that several candidates had applied for the IG position as well, which Ms. Yan confirmed. Judge Rodgers observed that some candidates had applied for both jobs: that of IG and executive director. He said that the COE should consider only the applications for executive director and decide on how many persons to interview, along with interview dates.

Mr. Reinhart requested follow-up group discussion of Mr. Harbison's observations on the issue of whether an attorney was considered a necessity, or whether someone with a strong administrative background was acceptable. Mr. Harbison said that litigation experience was a practical consideration, and that leadership as well as mature judgment and discretion were desirable traits.

Dr. Fiore asked whether there was agreement that an attorney was being sought. Judge Rodgers responded that he was looking for the best person for the job, and that he could not discern from the ratings list the occupations of the applicants.

Mr. Merriman stated that the County used a standard process for scheduling candidate interviews, and that travel expenses would be covered for out-of-town applicants. The elements the COE sought consisted of two pieces, he said, and they were:

- Applicant qualifications as they appeared on paper; and
- Interviews that revealed skill sets, personal strengths, and weaknesses.

Judge Rodgers said that procedurally, members were invited to state the names of candidates who did not appear on the list but that they wished to have added for consideration. Dr. Fiore suggested that the reverse should apply as well. She said that some names on the list appeared to be inappropriately ranked.

Mr. Reinhart stated that discussion should be held concerning the specific skills sets required. He said that the top five ranked may be the same five people at the end of the discussion, but that discussion should occur. Judge Rodgers then asked each member to describe the type of person that should be interviewed, and state their choices of names to be added or eliminated from the list.

Commenting on the time required for candidate discussion, Judge Rodgers suggested that a workshop day for initial applicant reviews may be needed.



#### **4. EXECUTIVE DIRECTOR SELECTION PROCESS**

##### **4.A. Review COE Executive Director Applications**

Mr. Farach said that he could work with the top three from the list of candidates, but that he had concerns about Mr. Sinai because he was currently working as a consultant rather than engaged in active practice. He said he would like to learn more about him. He also said that Michelle Suskauer, Esq., had spoken to him about Alan Johnson, Esq., relating that she had a high regard for him.

Judge Rodgers commented that COE members had agreed to discourage any comments being made to them about applicants.

Mr. Farach stated that he wanted to add Mr. James Cline to the list of top candidates. He said that his credentials included experience as a fraud investigator in his position as a manager for Nationwide Insurance Company, and that he possessed Certified Fraud Examiner (CFE) credentials to conduct internal operations. Mr. Farach added that anyone who had a CFE and worked in a large, complex insurance company should be considered as possessing personnel skills as well as the ability to operate in a large organization. He continued that candidate Breno Penichet, an investigator for the Miami-Dade County Commission on Ethics, should be interviewed.

Judge Rodgers stated that the list now contained eight names.

Mr. Harbison said that he considered some people to be strong candidates for the position of assistant to the IG rather than the lead role. He stated that he had no names to add to the list; however, he wished to ask the attorneys present whether ethics experience with any state bar association would transfer to the role of executive director.

Mr. Reinhart responded that he believed that such experience was as good or better preparation than some of the prosecutors and traditional lawyers possessed, because as bar counsel, they were presented with ethics complaints against lawyers, which required applications of the lawyer's code of ethics instead of applications of statutes or laws.

Judge Rodgers calculated that two- to two-and-a-half hours would be required to interview eight applicants. He said that the list should be narrowed to allow adequate time to interview each within a minimum of fifteen minutes.

#### **4.A. – CONTINUED**

Mr. Harbison remarked that the application of Cary Howard appeared to demonstrate her extensive experience in administering a large caseload of complaints before the Kentucky Bar Association. Mr. Reinhart said that her skill set seemed to be ideal for the second role.

Mr. Merriman estimated that interviews should be schedule to allow one hour per interviewee, so that a full day could be anticipated, resulting in a decision being made on the same day. He added that Ms. Yan had expertise in predictive index profiling to assist in that regard.

Judge Rodgers summarized that Melissa Anderson, Stacey Chados, Alan Johnson, Timothy Reddick, Arthur Sinai, Gail Allen, James Cline, and Breno Penichet were on the list for interviews, and that one hour per interview had been decided upon. Mr. Harbison said that he wished to add the name of Carey Howland.

Mr. Farach requested that the nine applicants be discussed and voted on for inclusion in the interviews. Mr. Reinhart concurred by seconding the request. Following general discussion, it was agreed that three “yes” votes were necessary for applicants to be chosen for interviews.

#### **4.B. Discussion**

Mr. Farach asked for comments on Melissa Anderson.

Mr. Harbison stated that Ms. Anderson had been an assistant county attorney and requested that others comment on her potential for strong administrative skills. Mr. Farach commented that she was a former deputy city attorney and that because she was certified in local government law, she knew many of the issues to be handled. He said he wanted to interview her.

Dr. Fiore said that she wished to interview Ms. Anderson, and Mr. Reinhart agreed that she should also be interviewed. Members also agreed to interview Stacey Chados, Alan Johnson, Timothy Reddick, and Gail Allen. Regarding James Cline, Judge Rodgers commented that his skills within the insurance industry were not applicable to municipal government; however, Mr. Cline received four votes and would be interviewed.

#### 4.B. – CONTINUED

Judge Rodgers announced a unanimous “no” to interviewing applicant Penichet, after a discussion. He said that the final candidate under consideration, Carey Howland, had received four “yes” votes.

Judge Rodgers commented that the chosen applicant needed to possess an understanding of lobbyists and how they worked, and of municipal government.

Dr. Fiore said that a requirement for considerable administrative responsibilities on the part of any candidate led her to inquire why the name of Mr. Driscoll was not being considered. Mr. Harbison added that Mr. Driscoll’s name was on his preferred list also, and said that he would like to receive feedback about him from the other members. Judge Rodgers said that he would decline to comment on those for whom he was not voting.

Mr. Reinhart stated that he had professional interactions with Mr. Driscoll, and that his job of managing police officers at the Florida Department of Law Enforcement locally may not have provided the background necessary to assume the outlined responsibilities. However, he added, he would agree to interviewing him if committee members decided that it was valuable to do so.

Mr. Harbison remarked that the possession of job skills was essential, and that he also considered a person’s perceived ability to perform as spokesperson for the COE. He concluded that an interview could help to reveal that ability. Dr. Fiore concurred in the assessment that community outreach was a major component, and that she did not envision Ms. Burns or Mr. Driscoll fulfilling that aspect of the job. Mr. Harbison added that he did not consider Mr. Driscoll’s skill set to be right for the job.

When Dr. Fiore queried whether anyone on the list could be considered as failing to appear independent, Mr. Farach replied that Mr. Johnson was currently working in the public integrity unit at the State Attorney’s Office. Mr. Reinhart stated that an interview with him would present an opportunity to explore issues of independence.

#### **4.B. – CONTINUED**

Mr. Harbison requested feedback on candidates Ettie Feistmann and Stephen Muffler. Mr. Farach said that he had not met Ms. Feistmann or worked on any cases with her. Judge Rodgers said that he would enjoy an opportunity to interview her if the others agreed. He asked Ms. Yan to read the list of names proposed for interviews.

Ms. Yan read the following names: Anderson, Chados, Johnson, Reddick, Allen, Cline, Penichet, and Howland. Penichet was eliminated by general consensus.

#### **MOTION to approve inviting the selected candidates for interviews. Motion by Bruce Reinhart and seconded by Ronald Harbison.**

Mr. Reinhart asked whether any of the seven were applicants who had applied for both the IG and executive director jobs. Judge Rodgers replied that some of them had applied for both, and that an additional list of candidates would be produced by Ms. Yan.

#### **UPON CALL FOR A VOTE, the motion carried 5-0.**

Concerning the scheduling of interview dates, Ms. Yan stated that results of a predictive index or similar product could arrive to the COE via e-mail from the issuing company, possibly within 48 hours of the applicants' online participation. As for reference checking and employment verification, Ms. Yan said, she and her staff were prepared to conduct any checks that were requested.

#### **4.C. Direction to Staff**

Judge Rodgers suggested that Ms. Yan notify the COE members of the appropriate timeframe for candidates to begin submitting letters of recommendation. Dr. Fiore requested that any letters of recommendation submitted by applicants be specific to the job, and not merely honorary letters.

Mr. Merriman recommended that the applicants be encouraged to refrain from any contact with the COE, and he said that Ms. Yan could communicate that to the candidates.

**5. COMMISSION COMMENTS**

**5.A. Selection Activities**

Judge Rodgers commented that the public awaited some action from the COE. Selection activities could proceed for the executive director and the IG, and repeat interviews could be accomplished. As to the overall timeframe, Mr. Merriman said that interviews could be scheduled from today's date to three weeks. He added that Ms. Yan could begin scheduling tomorrow.

(CLERK'S NOTE: Further discussion of item 5. took place later in the meeting. See page 14.)

**6. MEETING DATE TO SELECT INSPECTOR GENERAL INTERVIEWEES  
- 3/25/10**

Mr. Reinhart suggested that since the members of the Ethics/IG Selection Committee would all be present at a meeting next week, another meeting should be scheduled for the COE for the sole purpose of choosing an interview date. By then, he said, they would know the plans of the larger group, and then could coordinate procedurally.

Judge Rodgers commented that it was already agreed that the interviews would take an entire day.

**7. FUTURE MEETING DATES**

Mr. Harbison stated that he was willing to meet as often as needed to complete the process. Mr. Reinhart agreed to meet as often as necessary also.

Mr. Merriman requested confirmation that the group wished to meet at the conclusion of the Ethics/IG Selection Committee meeting on March 25, 2010. Mr. Reinhart confirmed that the meeting should not overlap, but should be separated.

Judge Rodgers asked for suggestions regarding the dates that were most convenient to members for scheduling the interviews, and whether weekdays or Saturdays were preferable.

**7. CONTINUED**

Mr. Merriman said that weekdays typically were chosen because they worked well with people's professional schedules. He added that Fridays worked well for those who traveled from other cities. Mr. Berger said that the target date for the new job to begin was May 1, 2010.

Judge Rodgers queried whether Saturday, April 24, 2010, would be convenient for conducting interviews. The members agreed that the date was suitable.

Mr. Merriman recommended that specific interview steps be discussed at the meeting next week. He stated that possibly the interviews could be conducted at the County's Vista Center complex. On the subject of training, he said that letters had been mailed to advisory board members outlining the County's ongoing ethics training.

(CLERK'S NOTE: The OFMB Budget Director added comments at this time.)

OFMB Budget Director Joe Doucette announced that the Policy and Procedure Memorandum that implemented the policy of the IG fee collection had been approved by the BCC, and that collection had begun. Mr. Berger clarified that fees not expended would be carried forward to the following year for the IG only, and not for the COE.

(CLERK'S NOTE: Commission Comments discussion resumed at this time.)

**5.B. Communication with the State Attorney and the Public Defender**

Mr. Reinhart asked staff to inform the state attorney and the public defender of today's meeting results so that they would be prepared to discuss those results next week. Mr. Merriman agreed to do that.

**5.C. Selection Process Changes**

Mr. Harbison remarked that it would be convenient if the executive director were selected before the IG position had been filled. He asked whether the selection process could be accelerated. Mr. Merriman replied that logistics may be more difficult because Ms. Yan required time to contact the candidates and coordinate schedules.

**5.C. – CONTINUED**

Judge Rodgers said that he would like to hear from attorneys in Broward or Miami-Dade Counties who were currently using this selection procedure for this group to avoid making mistakes that may have been made. He requested an appearance, from anyone available, for a 30-minute presentation prior to the meetings already scheduled.

Mr. Farach asked whether someone was available to travel to Miami-Dade County to study how its model worked.

Mr. Baker commented that the Broward County Inspector General appear at an Internal Audit Committee meeting, and that information had been gathered regarding Broward County's Internal Auditor (IA) workstyle. He stated that tasks that had been placed on the County's IG were actually discharged by the IA in Broward County. Mr. Merriman reported that County Administrator Robert Weisman and County Attorney Denise Neiman had spent almost an entire day with the Miami-Dade County Inspector General.

Mr. Farach stated that he would consider it helpful, prior to making a decision on which executive director applicant to hire, to consult Broward and Miami-Dade Counties' officials. He said he would like to learn of steps they might have done differently. Judge Rodgers requested that the Miami-Dade County IG be invited to speak for approximately 15 minutes about some of the problems he had encountered.

Mr. Berger responded that a conversation that may occur during such an appearance could be construed as a violation of the Sunshine Law, and stated that he recommended against it.

**8. ADJOURNMENT**

**At 5:58 p.m., the Chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair