MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS (COE)

I. **CALL TO ORDER:** November 30, 2011, at 1:40 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. **ROLL CALL**

COMMISSIONERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Robin N. Fiore, Ph.D.
Ronald E. Harbison, CPA
Bruce E. Reinhart, Esq. - Absent

STAFF:

Mark E. Bannon, COE Investigator
Alan S. Johnson, Esq., COE Executive Director
Gina A. Levesque, COE Administrative Assistant
Megan C. Rogers, Esq., COE Staff Counsel
Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. **INTRODUCTORY REMARKS**

Judge Edward Rodgers requested that everyone turn off or silence all cell phones, and that if anyone wished to speak, a comment card containing the agenda item should be filled out and submitted to a Commission on Ethics (COE) staff member. He added that public speakers should adhere to the time limit.

IV. **APPROVAL OF MINUTES FROM OCTOBER 31 AND NOVEMBER 3, 2011**

MOTION to approve the October 6, 2011, and November 3, 2011, minutes. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

V. COMPLAINTS – PROPOSED SETTLEMENT

V.a. C11-017

Alan Johnson, Esq., COE executive director, requested that the COE members consider Conrad Saddler's complaint case. He said that if the COE accepted the proposed negotiated settlement, staff would recommend that the letter of reprimand be publicly read.

John Cleary, COE advocate (Advocate), stated that:

- Pursuant to the COE's ordinance, section 2-260, Mr Saddler (Respondent) believed that it would be in his best interest to avoid the time and expense of a final hearing by not contesting the complaint's allegations.

- Pursuant to the proposed settlement agreement (agreement), the COE agreed to waive the $500 fine prescribed under the COE's ordinance, section 2-448(b), and to issue a letter of reprimand.

- The Respondent understood and agreed to abide by the COE's findings, pursuant to the COE's ordinance, section 2-260.1(g), as to the violation being intentional or unintentional.

- The two-page agreement embodied the consent of the parties, with no promises, terms, conditions, or obligations other than those contained in the document.

- The agreement superseded any and all previous communications, representations, and offers, either verbal or written, between the Advocate and the Respondent.

- By signing the document, the Respondent acknowledged that he did so freely, voluntarily, and without duress; that he was competent to enter into the agreement; reviewed the agreement with his attorney; and fully and completely read and understood the terms and conditions.

- The Advocate and the Respondent agreed that the settlement of his action in the manner described was just and in the best interest of the respondent and the County's citizens.

- Evidence of the offer of compromise and settlement was inadmissible to prove any allegations.

V.a. – CONTINUED

- The Respondent also understood and agreed that offers were final when accepted by the COE.

- The Advocate would submit the agreement and incorporate by reference the Respondent's one-day suspension discipline by the County's human resources department.

Dominique Marsh, Esq., the Respondent's attorney, stated that the assigned agreement was submitted to the Advocate, and it was being presented to the COE for approval.

Mr. Saddler said that he had no questions for the COE members, and that he understood the agreement's terms.

Mr. Johnson stated that pursuant to the County's Code of Ethics (Code), the COE should determine whether complaint violations were intentional or unintentional.

MOTION to approve the proposed negotiated settlement agreement. Motion by Ronald Harbison, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

Dr. Robin Fiore commented that since the Respondent had signed a pledge stating that he understood that he was not to provide or receive help on the test, his actions appeared intentional.

Commissioner Manuel Farach stated that:

- By printing the test pages and providing them to a supervisor, the Respondent, in effect, pushed approval of his actions up the line.

- His recollection was that the test pages did not contain a watermark or a written statement that the test pages should not be distributed.

- Under both circumstances, the complaint's violation would qualify as unintentional.

Mr. Johnson clarified that one of the respondents in the companion case was a supervisor, and that she and other supervisors, including the Pretrial Services Agencies' director and assistant director, ultimately took the test.

V.a. – CONTINUED

Judge Rodgers said that he was unsure how the COE could conclude that the Respondent's actions were unintentional, and he hoped that a determination could be made without harming the Respondent's career.

Mr. Johnson stated that:

- Each test screen had to be printed since there was no ability to download and print the test in one step.
- No prior tests were included in the 1,000 test pages that were distributed as a study guide.
- Staff had recommended probable cause based on these two, and other, factors. No staff recommendation was made whether the complaint's violation was intentional or unintentional, and the Code did not provide any guidance.
- Everyone who received the test pages had to retake the exam.

Commissioner Ronald Harbison commented that it was too difficult to conclude that there was a lack of intent.

Mr. Johnson said that staff determined that there was a distinction in the factual pattern between the first and the second case. This case was similar to a no-contest plea, and withholding of adjudication did not exist.

MOTION to approve the Commission on Ethics' finding that the violation was intentional. Motion by Robin Fiore, seconded by Ronald Harbison, and upon a show of hands, the motion carried 3-1. Manuel Farach opposed and Bruce Reinhart absent.

Judge Rodgers stated that the COE's vote was to accept the agreement without any changes as consented by the parties.

Mr. Johnson clarified that:

- The vote just taken was a separate vote to determine whether the complaint's violation was intentional or unintentional.
- The COE had previously voted unanimously to accept the agreement.

V.a. – CONTINUED

- A revised public report and final order would be issued using the word, intentional.

- The letter of reprimand should be publicly read by either the COE's chair or vice chair.

Judge Rodgers requested that Commissioner Farach read the letter of reprimand.

Commissioner Farach stated that he would summarize the letter's pertinent portions as follows:

> The executive director of the Commission on Ethics, Alan Johnson, filed a complaint in case number C11-017, in re: Conrad Sadler on August 26, 2011, alleging that Mr. Sadler misused his public position by printing and distributing a National Association of Pretrial Services certification examination to other public employees who had not yet taken the test.
>
> On August 26, 2011, the complaint was deemed to be legally sufficient by staff. On October 6, 2011, the Commission on Ethics, in executive session, found probable cause to believe a violation had occurred and set the matter for a final hearing.
>
> On November 30, 2011, a negotiated settlement was submitted to the Commission on Ethics, and the Commission on Ethics has voted on that settlement unanimously.
>
> According to the negotiated settlement, Respondent agrees not to contest the allegations contained in the complaint and the finding of the commission that he violated section 2-443(b) of the Code of Ethics, and agrees to accept a letter of reprimand.
>
> Pursuant to the Commission on Ethics ordinance, section 2-260.1, Public Hearing Procedures, the commission finds the violation was intentional. The ethics commission did not assess a fine; however, Respondent has been issued a letter of reprimand. Done and ordered by the Palm Beach County Commission on Ethics in public session on November 30, 2011.

V.a. – CONTINUED

Mr. Johnson stated that Commissioner Farach had read the beginning of the letter of reprimand, which restated the facts of the case. Staff recommended that Commissioner Farach read last paragraph on page 2 of the letter of reprimand, beginning with the words, Your actions.

Commissioner Farach read the portion of the letter of reprimand, page 2, as follows:

> Your actions constituted a violation of the Code of Ethics. The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are above reproach.

Commissioner Farach suggested that the words, above reproach, should be changed to the words, beyond reproach. He continued:

> As a public employee, you are an agent of the people and hold your position for the benefit of the public. The people's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than public welfare. Violations of the Code of Ethics contribute to the erosion of public confidence and confirm the opinion who believe (sic) the worst about public officials. You are hereby admonished and urged to make the respect of the people in their government your foremost concern in your future actions. Sincerely, Edward Rodgers, chairman of the Commission on Ethics.

MOTION to receive and file the letter of reprimand document as amended, replacing the words, above reproach, with the words, beyond reproach, on page 2, fourth paragraph; the proposed negotiated settlement agreement document; and the public report and final order document, once the Commission on Ethics signed all three documents. Motion by Ronald Harbison, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson said that staff would amend the letter of reprimand's language as discussed.

V. – CONTINUED

V.b. C11-018

Mr. Cleary stated that:

- Pursuant to the COE's ordinance, section 2-260(d), the COE may enter into stipulations and settlements that it found to be just and in the best interest of the County's citizens.

- Debbie Crow (Respondent) believed that the proposed stipulated agreement (agreement) would be in her best interest to avoid the time and expense of litigation, and that she desired to resolve the matter in the stated fashion.

- Pursuant to the agreement, the COE agreed to waive the $500 fine and issue a letter of reprimand.

- The Respondent agreed and understood to abide by the COE's decision regarding its finding, which was required pursuant to the COE's ordinance, section 2-260.1(g) as to whether the violation was intentional or unintentional.

- The agreement embodied the consent of the parties.

- There were no promises, terms, conditions, or obligations were made other than those contained in the agreement.

- The agreement superseded any and all previous communications, representations, and offers, either verbal or written, between the Advocate and the Respondent.

- By signing the document, the Respondent acknowledged that she did so freely and voluntarily without duress; that she was competent to enter into the agreement; that she had reviewed the agreement with her attorney; and that she fully understood and completely read the terms and conditions.

- The Advocate and the Respondent agreed that the settlement of this action was just and in the best interest of the Respondent and the County's citizens.

V.b. – CONTINUED

- Evidence of the offer of compromise and settlement was inadmissible to prove any of the allegations.

- The Respondent understood and agreed that no offer was final until accepted by the COE.

Tara Finnigan, Esq., the Respondent's attorney, stated that she and her client believed that the negotiated settlement covered everything and that her client believed it was in her and the County's best interest to admit to the allegations.

Mr. Cleary said that part of the agreement included an incorporated reference to the Respondent's three-day suspension by the County's human resources department. He added that the Respondent had completed the suspension from November 21, 2011, to November 23, 2011.

Ms. Finnigan stated that she believed that the test takers had received permission to retake the test without re-paying the $110 fee.

Mark Bannon, the COE senior investigator, clarified that the $110 test fee provided two opportunities to take the test.

MOTION to approve the proposed negotiated settlement agreement. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

MOTION to approve the Commission on Ethics' finding that the violation was intentional. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

MOTION to receive and file the letter of reprimand document; the proposed negotiated settlement agreement document; and the public report and final order document, once the Commission on Ethics signed the three documents. Motion by Manuel Farach, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

Mr. Johnson requested that the letter of reprimand be publicly read into the record.

Judge Rogers asked that Commissioner Farach read the letter of reprimand.

V.b. – CONTINUED

Commissioner Farach said that the letter of reprimand regarding complaint C11-018 was dated November 30, 2011, and was addressed to Ms. Debbie Crow, pretrial counselor. He stated that he would read the letter of reprimand's pertinent portions as follows:

> Dear Ms. Crow: When the Commission on Ethics met in executive session on October 6, 2011, it found that probable cause existed to believe you had violated the Code of Ethics, particularly section 2-443(b), by using your official position to copy, distribute, and use a National Association of Pretrial Services Agencies' certification examination to benefit other Pretrial Services' employees, who had not yet taken the examination. On November 30, 2011, you admitted to violating section 2-443(b) of the Code of Ethics entitled, 'Corrupt Misuse of Official Position.' This settlement agreement in this case provides for you to accept this public reprimand.
>
> The significant facts are as follows: You are employed as a supervisor by the Palm Beach County Pretrial Services Department, the PTS Department. Seventeen employees within PTS were scheduled to take an examination given by the National Association of Pretrial Services Agencies to become certified in the area of pretrial services. The exam was to be administered on one of three dates; June 21, 23, and 25, 2011. This test was paid for by the County at a cost of $110 per employee for each of the 17 employees, for a total cost of $1,870. The successful completion of the examination would lead employees to being awarded the NAPSA certification as Pretrial Services professionals.
>
> NAPSA gave each test taker, including yourself, instructions that you were prohibited from receiving assistance from anyone in taking the computer-based examination; notwithstanding, the test was an open-book examination. At the conclusion of the examination, you certified you had not received any such assistance. NAPSA provided over 1,000 pages of study materials; however, there were no practice tests or copies of old examinations provided as reference materials by NAPSA. You took an active role in preparing employees within your office for the examination.

V.b. – CONTINUED

Conrad Saddler, a PTS employee and quote, point person, for the exam, took the certification examination on Tuesday, June 21, 2011. While taking this test, he printed out copies and attached information he believed constituted correct answers to the test. There was no accessibility given by NAPSA to print the test as a whole document; however, Mr. Saddler was able to print the individual pages by printing each screen of the online examination separately. He then distributed copies of this document to you. Upon receiving a faxed copy of these materials from Mr. Saddler and being aware the document was a copy of a completed test, you made additional copies of this information and distributed them to several of your subordinates at the PTS main courthouse location. You then used this material with your employees in a study session, knowing that you and your employees had not yet taken the examination. This information gave you and your employees an advantage over those who had taken the test on June 21st. At least one of your employees consciously refused to use these materials. The same examination was given on June 23rd and 25th. You personally sat for the examination on June 23, 2011.

Your actions as outlined above constitute a violation of the Code of Ethics. The Commission on Ethics is of the strong belief that all public employees and officials are responsible for making sure their actions fully comply with the law and are beyond reproach. As a public employee, you are an agent of the people and hold your position for the benefit of the public. The public's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than public welfare. Violations of the Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public officials.

You are hereby admonished and urged to make the respect of the people in their government your foremost concern in your future actions. Sincerely, Edward Rodgers, chairman, Commission on Ethics. Dated November 30, 2011.

Mr. Johnson commented that the COE's advocates, including Mr. Cleary, were pro bono through the Legal Aid Society.

VI. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

VI.a. Request for Advisory Opinion (RQO) 11-102

VI.b. RQO 11-108

VI.c. RQO 11-109

MOTION to approve the Consent Agenda. Motion by Robin Fiore, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Judge Rodgers inadvertently called the vote 4-1.)

VII. ITEMS PULLED FROM CONSENT AGENDA – None

VIII. HOLIDAY GIFTS (PROPOSED OPINIONS)

Mr. Johnson stated that he was disclaiming any ability to make decisions, which was solely in the COE's purview, and that only proposed opinions and recommendations by staff were being presented to the COE. He added that of the three advisory opinions regarding holiday gifts, RQO 11-103 was the most thorough and the most encompassing.

VIII.a. Page 14

VIII.b. RQO 11-103

Mr. Johnson stated that:

- Peter Elwell, the Town of Palm Beach manager, submitted an advisory opinion containing four specific questions regarding holiday gift giving.
- Staff had expanded on the opinion regarding question three since there were companion letters that referred to general holiday gifts.
- In all cases, at no time could public officials and employees accept items valued over $100 if given by their municipal vendors or lobbyists.

VIII.b. – CONTINUED

- Public officials and employees could not accept anything of value that they solicited from a vendor or a lobbyist if it financially benefitted themselves, another employee or official of their government, their relatives, or household members.

- Under no circumstances could a gift be accepted or solicited in exchange for an official public action or a public duty.

MOTION to approve proposed advisory opinion letter RQO 11-103. Motion by Manuel Farach.

(CLERK'S NOTE: The motion was amended and seconded later in the meeting.)

Dr. Fiore stated that she supported approving RQO 11-103 in theory, but she had concerns regarding the letter's wording. She said that the letter's reference to gifts valued in excess of $100 from a vendor or a lobbyist could mean individual gifts and not in the aggregate or for the year. She suggested that clearer language was needed wherever the $100 was referenced.

Mr. Johnson said that staff would review the letter, and the following language could be changed:

- Wherever the word, gift, was referenced, it could be changed to the word, gifts.

- A comma and the language, in the aggregate for the calendar year, could be added after each reference to the language, gifts of a value in excess of $100.

Dr. Fiore also suggested that the letter should clarify that each gift from the same vendor was totaled throughout the year.

Commissioner Harbison commented that gift giving to sanitation workers as opposed to policemen or building inspectors were very different situations. It would help staff if municipalities had their own policies and rules regarding these situations, he said.

Mr. Johnson stated that:

- Most municipalities had their own gift rules, which could be more stringent than the County's Code of Ethics (Code).

VIII.b. – CONTINUED

- Some service-type industries that employed newspaper delivery, sanitation and postal workers were more socially acknowledged as industries being given holiday gifts.

- The proposed language, Therefore, the total allowable gifts that may be given by a vendor or a lobbyist may not exceed $100 during the course of an entire calendar year, could be added after the first sentence, last paragraph on page 3.

Judge Rodgers asked whether the COE should forward copies of the advisory opinion letters to the municipalities.

At Judge Rodgers' query, the COE's consensus was to direct staff to attach and email advisory opinion letters to the 38 municipalities to save money and postage.

AMENDED MOTION to approve proposed advisory opinion letter RQO 11-103 with the changes as discussed. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

VIII.c. RQO-11-110

Mr. Johnson stated that the City of Atlantis (City) manager asked whether the Code would be violated if the City solicited monetary donations from residents for an employee holiday fund where the funds would be later distributed equally to each City employee. He added that staff had submitted the following:

- The Code did not prohibit the distribution of funds donated by City residents to its employees as a holiday gift, provided that if the distribution was over $100 per employee, no funds were solicited or accepted into the fund from any City vendor or lobbyist.

- The collected funds could not be given for past, present, or future performance of a legal duty or as a result of any official action taken by the City or its employees.

- If each City employee's share exceeded $100, the gift must be reported per the Code.

VIII.c. – CONTINUED

Keith Davis, Esq., City attorney, stated that City staff supported approval of RQO 11-110. He added that he believed that the monetary donations were not anonymous.

Commissioner Harbison disclosed that he was a City resident, and that he did not remember receiving a solicitation.

Mr. Bannon stated that almost all of the solicited donations were made by check, and receipts were given for all donations.

Mr. Johnson stated that:

- His office had received a flyer containing the solicitation information from an anonymous source.
- Staff could have made an inquiry into the anonymous flyer, or they could have contacted the City and requested information about the flyer.
- Rather than conducting an inquiry or an investigation, staff had decided to provide an advisory opinion letter through the City's manager.

MOTION to approve proposed advisory opinion letter RQO 11-110. Motion by Manuel Farach, seconded by Robin Fiore, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: Item VIII.a. was presented at this time.)

VIII.a. RQO 11-100

Mr. Johnson stated that:

- The advisory opinion letter was originally a consent agenda item; however, staff pulled the letter for discussion with other holiday gift-giving items.
- The letter involved an attorney whose law firm contracted with the Town of Haverhill (Town) to provide legal services.
- The attorney asked whether his law firm could provide holiday gifts to Town council members and staff, provided that the gifts were valued at less than $100.

VIII.a. – CONTINUED

Dr. Fiore stated that in addition to the language, provided the gifts are valued at less than $100, the advisory opinion letter should include language that the law firm had not previously been given gifts.

Mr. Johnson said that he agreed that the issue of an aggregate had not been raised in the letter. He added that:

- The attorney was a contract employee so his gift was an employee-to-employee gift as opposed to a gift from his law firm, which, depending on its interpretation, could possibly be a lobbyist gift.

- The question of whether the law firm or the attorney individually contracted with the Town would have been vetted in the letter if staff had analyzed the broad issue after the item was removed from the consent agenda.

- Assuming that the aggregate of gifts during the year was below $100, the issue of whether the attorney was an employee or a vendor was not relevant to this particular letter.

- The letter could be revised to include a comma and the language, in the aggregate for the calendar year, after each use of the language, gifts of a value in excess of $100.

Dr. Fiore recommended that the sentence on page 2 above the words, In summary, and beginning with the words, Since the value, should be deleted since the aggregate was unknown.

Mr. Johnson said that the word, Since, at the beginning of the sentence on page 2 could be changed to the word, If.

Commissioner Farach stated that he was concerned about calling the attorney a contract employee rather than a vendor.

Commissioner Harbison said that he agreed that the attorney should be considered a vendor.

VIII.a. – CONTINUED

Mr. Johnson stated that:

- The question of whether the attorney was considered a contract employee, a vendor, or both, in relation to the Town was raised in the letter, but the sentence on page 2, beginning with the words, A question arises, could be stricken.

- The Code said that anyone within the COE's jurisdiction could ask for an advisory opinion.

- As a contract employee, the attorney's actions would be more restricted.

- The last paragraph on page 1, beginning with the words, The definition of official or employee, and concluding on page 2, ending with the words, to the Town, could be stricken.

Dr. Fiore commented that the letter also stated that the gift law prohibited a public official or employee, as if the attorney was placed in that category.

Mr. Johnson clarified that:

- The main jurisdiction over vendors involved gift giving.

- The first paragraph on page 2 provided alternatives by considering prohibitions involving public officials in the first sentence, and vendors in the second sentence.

MOTION to approve proposed advisory opinion letter RQO 11-100 as amended to include the changes as discussed. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

(CLERK'S NOTE: The numerical order of the agenda was restored.)

IX. MISUSE OF OFFICE AND VOTING CONFLICTS: REASONABLE CARE STANDARD (PROPOSED OPINIONS)

IX.a. RQO 11-099

Mr. Johnson stated that:

- A municipal official was employed by a major, national bank in one of its local branches.
- The letter, submitted through the City of Boca Raton's (City) attorney, Diana Grub Frieser, Esq., regarded the standard of care required to determine whether someone appearing before the municipal official's board was a customer or client of the municipal official's employer.
- The Code said that elected officials may not financially benefit if they knew or should have known, with the exercise of reasonable care, that they would be specially, financially benefitted.

Megan Rogers, Esq., COE staff counsel stated that:

- Elected officials were prohibited from voting on matters that would financially benefit themselves, their outside employer, or a customer or client of their outside employer.
- The Code defined a customer or client as any person or entity to which an official or employee's outside employer or business had supplied goods or services during the previous 24 months, having an aggregate value of more than $10,000.
- There was no bright line definition of reasonable care. It depended on the facts and circumstances.
- In determining if a conflict existed, the Code did not require any particular degree of research or due diligence on a public official's part.
- The City submitted an addendum letter to staff's opinion letter which stated that an official or an employee would be prohibited from voting on a matter that was significantly attenuated from a perceived or a real financial benefit; and that staff's interpretation was overly broad.

IX.a. – CONTINUED

- The City suggested that staff revise the advisory opinion letter allowing an elected official to vote on, and participate in, a matter where a customer or client of the official's outside employer was before the official's board, but there was no nexus between the matter and the official's or client's relationship with the official's outside employer.

- In the City's initial hypothetical scenario where an official would or would not know of the relationship between the official's outside business or employer and its customer or client, the official's ability to influence his or her customer or client, or the official outcome of his or her employer's business was significantly attenuated that no financial benefit existed.

Mr. Johnson stated that:

- Ms. Rogers' last reference to the City's initial hypothetical scenario was the City's recommendation that was contained in its letter and submitted by the City's attorney.

- Problems existed in determining what constituted a financial nexus, and in providing any bright line as to what constituted knowledge.

- Court cases had offered some guidance that the reasonableness standard must refer to actual or constructive knowledge, and accepting a gift was insufficient to establish a violation. Circumstances were necessary to support that someone knew a gift was given to influence.

- If the COE required the standard practice of performing computer searches to determine whether a gift was given to influence, it was unlikely that an appellate court would uphold its constitutionality if a conviction was decided without additional clear and convincing evidence that someone either knew, or constructively knew, that the gift was given to influence.

Dr. Fiore commented that the hypothetical scenarios being used, and Mr. Johnson's references to reasonableness, were obfuscating the issue. The issue, she said, was when should an advisory board member or an elected official abstain and not participate in a vote.

IX.a. – CONTINUED

Ms. Rogers said that:

- The City's letter requested an opinion regarding a City council member who worked for a large, national financial institution. The hypothetical portion of staff's opinion regarded an out-of-state individual who invested in the City and who was a national financial institution's client.

- Advisory opinion letter RQO 11-099 was unrelated to a previous advisory opinion letter regarding a City architect.

Mr. Farach said that he believed that the COE would be unable to provide a bright-line definition regarding the misuse of office ordinance since it depended on the circumstances.

Ms. Frieser stated that:

- The addendum letter's purpose was to respond to staff's proposed advisory opinion letter.

- Today's advisory opinion letter was unrelated to any prior letter since it contained completely different facts and was under a different County Code section.

- A majority of the advisory opinion letter and of today's discussion, addressed the reasonableness standard, not the opinion's scope. The City's central question was whether a nexus was required, and whether a voting conflict existed if no relationship existed between the matter before the COE and the City council member or the City council member's outside employer.

- Hypothetical scenarios were provided to demonstrate the effects of the proposed advisory opinion, which the City believed was not a correct application of an ethics code.

- Staff's proposed advisory opinion language constituted an unlawful voting conflict and an arbitrary rule, and would create an absurd result. The intent of ethics' rules was to avoid conflict situations.

IX.a. – CONTINUED

- The City asserted that in the factual circumstance neither a direct nor an indirect benefit existed either to the City council member or to his or her outside employer; therefore, no situation should exist to result in a voting conflict.

- She agreed with the COE's opinion that no bright-line rule defined reasonableness; however, she disagreed with creating rules regarding when a voting conflict existed.

- The City's request for guidance, based on specific facts on how the $10,000 threshold for goods and services should be calculated for the purposes of a customer or client, was not included in the proposed advisory opinion letter.

Ms. Frieser, in explaining the specific, factual situation as contained in the City's advisory opinion request to the COE, added that:

- Under the Code and staff's proposed advisory opinion, a situation where someone was a client of the council member's employer, and who resided in a different location, would constitute a per-se conflict.

- Under State law, an elected official had an obligation to participate in the voting process unless he or she had a voting conflict.

Commissioner Farach commented that he did not perceive a per-se prohibition in staff's proposed advisory opinion. He added that even with Ms. Frieser's factual scenario, he would have asked more questions, such as, how many accounts the client had at Citibank's Town of Jupiter branch.

Mr. Johnson stated that:

- Staff had reviewed the Code's bright-line definition that if an elected official had a customer or a client, he or she could not specially, financially benefit that customer or client.

- The issue was whether an individual knew that someone was a customer or client.

IX.a. – CONTINUED

- If the COE interpreted the Code's language to mean that a financial nexus was required between the individual and the issue before the City's governing body, the proposed advisory opinion letter may need to be rewritten.

- Staff had attempted to state what constituted reasonableness with regard to having knowledge.

Ms. Frieser commented that the proposed advisory opinion letter focused on whether a violation would be issued.

Commissioner Harbison stated that:

- He read staff's proposed advisory letter and the City's supplemental letter, and he did not believe that any issues existed with staff's opinion letter.

- He was concerned with creating a precedent in an advisory opinion, which someone could use in a different circumstance.

Ms. Frieser said that the City had reviewed whether the City council member should ask anyone who came before her if he or she was a customer or a client of Citicorp. She added that it would require additional research to determine whether that placed a reasonable or unreasonable legal burden on elected officials.

Mr. Johnson stated that staff had not provided any guidance in the proposed advisory opinion letter on the meaning of customer or client regarding factored goods or services valued over $10,000, but they would review State law and other sources and bring back at the next COE meeting specific guidance for the City.

MOTION to approve proposed advisory opinion letter RQO 11-099. Motion by Manuel Farach and seconded by Ronald Harbison.

Dr. Fiore asked whether the motion could be amended to delete the proposed advisory opinion letter's hypothetical scenarios.

AMENDED MOTION to approve proposed advisory opinion letter RQO 11-099 as amended to delete the hypothetical scenarios. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

IX.a. – CONTINUED

Dr. Fiore said that if and when a hypothetical scenario became an issue, the City could submit another opinion request.

Mr. Johnson clarified that:

- The hypothetical scenarios contained in the City's addendum letter were not included in the proposed advisory opinion letter.

- Staff would delete the proposed advisory opinion letter's one paragraph that contained a hypothetical scenario and leave the last line which began, As the City attorney.

Dr. Fiore requested that the last two sentences on page 3, fourth paragraph, that began, As evidenced by the hypothetical scenario, should also be deleted; and the COE's consensus was to accept that change.

IX.b. RQO 11-101

Mr. Johnson stated that:

- A Board of County (BCC) commissioner asked whether the Code applied to issues that may come before the BCC involving customers or clients of her son's firm, and what reasonable care and special benefit meant within the context of an official's public duty under the Code.

- Staff submitted that:

    - The Code's misuse of office provisions involving special, financial benefit did not apply directly to customers or clients of the employer of an official's child.

    - If a scenario were presented to the BCC whereby the firm of an official's child would receive a financial benefit not shared with similarly situated members of the general public, an official could not vote on or participate in the matter.

    - There was no bright-line definition of reasonable care or special, financial benefit since reasonableness necessarily depended on the facts and circumstances as presented.

IX.b. – CONTINUED

- Based on reviewed case law, constructive or actual knowledge was necessary.

- Circumstances could occur where the official's son was standing next to an applicant, where the name of the official's son appeared as a coapplicant in terms of his employer or business, or where the official may have knowledge, however gained. In those circumstances, the official should abstain from participating or voting on a matter.

Judge Rodgers commented that the COE should attempt to provide advisory opinions based on the law.

MOTION to approve proposed advisory opinion letter RQO 11-101 as amended to delete any hypothetical scenarios. Motion by Robin Fiore.

MOTION DIED FOR LACK OF A SECOND.

Mr. Johnson said that the sentence on page 3, third paragraph, beginning with the words, Clearly, if your son's company, could be deleted.

Dr. Fiore suggested that the last sentence on page 3, third paragraph, beginning with the words, An official proceeds at his or her peril, should also be deleted.

Mr. Johnson responded that the last sentence was not a hypothetical scenario, and it should remain. He said that he believed that no other hypothetical scenarios existed.

Commissioner Farach expressed concern regarding a discussion of the *Goin* case in the proposed advisory opinion letter.

Mr. Johnson stated that a reference to the *Goin* opinion was instructive with respect to other identical statute language and how the courts had reacted to that case; however, any reference to the *Goin* case could be deleted.

Mr. Farach suggested that the first two sentences on page 2, last paragraph should remain, and references to the *Goin* case should be deleted.

IX.b. – CONTINUED

Mr. Johnson said that the last two sentences on page 2, beginning with the words, In *Goin v. Commission on Ethics,* and with Dr. Fiore's suggestion, ending with page 3, third paragraph, first sentence, the words, of office sections, could be deleted.

Mr. Farach suggested that the entire paragraph on page 3, third paragraph, beginning with the words, Applying the reasoning, should be deleted.

Mr. Johnson clarified that the following language would be deleted: The last two sentences on page 2, last paragraph, beginning with the words, In *Goin v. Commission on* Ethics, and ending with page 3, the entire third paragraph, beginning with the words, Applying the reasoning.

Dr. Fiore suggested that the words, In order to sustain a violation, on page 3, fourth paragraph, first sentence, could be deleted.

Mr. Johnson said that the words, that violation, on page 3, fourth paragraph, first sentence, should be changed to, a violation.

Dr. Fiore suggested deleting the words, Such a finding must be, on page 3, fourth paragraph, second sentence.

Mr. Johnson read the amended language on page 3, fourth paragraph:

> The COE must find by clear and convincing evidence that a public official or employee committed a violation, based upon competent, substantial evidence in the record.

MOTION to approve the proposed advisory opinion letter as amended to include the changes as discussed. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

RECESS

At 4:14 p.m., the chair declared a recess.

RECONVENE

At 4:32 p.m., the meeting reconvened with Manuel Farach, Robin Fiore, Ronald Harbison, and Judge Rodgers present.

(CLERK'S NOTE: The motion on item IX.b. was repeated.)

MOTION to approve the proposed advisory opinion letter as amended to include the changes as discussed. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 4-0. Bruce Reinhart absent.

X. PROPOSED ADVISORY OPINIONS

X.a. RQO 11-089 (resubmitted)

Mr. Bannon stated that:

- The item had been before the COE three times, with only the reporting requirements being changed in the letter.
- In the final analysis, whether the trustees were originally nominated for the position by other trustees, the issue was who appointed them, which was the governing board.
- The trustees were also reporting individuals under State law. As pension board members appointed by their governing board, they still had prohibitions.

MOTION to approve the proposed advisory opinion letter RQO 11-089. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

X.b. RQO 11-090 (resubmitted)

Ms. Rogers stated that:

- Staff had resubmitted RQO 11-090 after receiving additional information regarding the bid process and the company that was involved in the bid process.

X.b. – CONTINUED

- A Town of Palm Beach Shores (Town) public works director asked whether a prohibited conflict of interest was created if his spouse submitted a sealed bid for, and was awarded, a contract to provide lawn and landscape services to his government employer.

- The changed facts were that his spouse was the sole owner of the lawn and landscaping company, of which she owned more than five percent.

- The Town employee filed a statement with the Supervisor of Elections and the COE, disclosing his wife's ownership interest in the landscaping company.

- The underlying contract was supervised by the Town manager, and the employee was not involved in the bid specifications or oversight of the contracts.

- After submission of the opinion request, staff was notified by the Town's attorney that the Town employee's spouse was not awarded the contract.

- Staff submitted that:

    - A public employee may never use his or her official position to give or influence others to his or her spouse's business a special, financial benefit.

    - The Code prohibited an employee, his or her outside employer or business, or a business in which a member of their household has at least five percent ownership interest, such as this situation, from contracting with their public employer.

    - The Code contained an exception to the contractual relationship provision for contracts under a sealed competitive-bid process where public employees did not participate in the bid specifications. In this situation, the Town employee had not participated in the bid specification, and he would discontinue participation in the contract's oversight.

    - The Code's exception stated that public employees could not use their positions to influence colleagues.

X.b. – CONTINUED

- A public employee should disclose the nature of his or her spouse's interest in a corporation that was submitting a contract bid, which the Town employee did.

- Based on the facts submitted, the Code did not prohibit S & W Professional Services Corporation from contracting with the Town.

Keith Davis, Esq., Town attorney, stated that he believed the proposed advisory opinion letter implied and inferred that the contract could have only been awarded to the lowest bidder, which became an issue when the bid was awarded.

Mr. Johnson said that the Code's exception included awards given to the lowest bidders. He recommended the following changes to the proposed advisory opinion letter:

- Page 1, third paragraph, fourth sentence:

  The Code provides an exemption for contracts entered into under a process of sealed, competitive bidding, where your spouse is the lowest bidder, provided that you have not participated…

- Page 2, last paragraph, second sentence:

  However, section 2-442(e)(1) provides an exception for contracts awarded under a system of sealed, competitive bidding, where your spouse is the lowest bidder.

MOTION to approve proposed advisory opinion letter RQO 11-090 as amended to include the changes as discussed. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

X.c. RQO 11-104

Mr. Bannon stated that:

- A Town of South Palm Beach (SPB) clerk, who was the president of the County's Municipal Clerk's Association, asked for procedures regarding fundraising to further other clerks' education.

X.c. – CONTINUED

- Staff submitted that providing the fundraising was done by silent auction of donated items, and providing that a lobbyist, a principal, an employer of a lobbyist, or a vendor of any municipalities did not donate items, the SPB clerk could fundraise.

- The SPB clerk had provided COE staff with a fundraising procedure based on an incorrect reference to the Code's section regarding charitable organizations.

Mr. Johnson said that the training and educational fees were considered an exception to the Code's gift law under section 2-444(g)(1)(h):

> Registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses either properly waived or inapplicable pursuant to 2-443(f) provided that the attendance is for government purposes and the attendance is related to their duties and responsibilities.

He added that if a vendor made a donation, the Code's section regarding reimbursements would apply.

Dr. Fiore said that the clerks were basically raising money for themselves to further their educations, which would be considered a gift.

Mr. Johnson stated that:

- The fees themselves were not reportable gifts, but the clerks could not accept any travel expenses, which was under a different Code provision.

- The clerks would be unable to accept travel expenses without a waiver. If they accepted them with the waiver, then it would not be considered a gift.

- The proposed advisory opinion letter may need to be pulled and reviewed. If travel expenses were not considered gifts, the clerks' actions may not be limited under the Code's gift law.

- Donations would be gifts since they were not being used to actually pay the registration fees.

Mr. Johnson said that if the COE elected to table the item, staff would review the issues regarding reimbursement and gifts.

X.c. – CONTINUED

Commissioner Farach requested that the revised proposed advisory opinion letter contain a summary sheet explaining why the letter was coming back for the COE's review.

MOTION to table proposed advisory opinion letter RQO 11-104. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

X.d. RQO 11-105

Mr. Bannon stated that:

- The Town of Juno Beach (Juno) attorney requested an advisory opinion whether Seacoast Utility Authority (SAU), which employed a Juno council member, was considered an outside employer, and whether the Juno council member would have a voting conflict if the SAU came before the Juno council.

- Staff had opined that since SAU was a governmental organization owned by five municipalities, an exception to the conflict rules existed, and the voting and participation restrictions did not apply to the council member.

MOTION to approve proposed advisory opinion letter RQO 11-105. Motion by Robin Fiore, seconded by Manuel Farach, and carried 4-0. Bruce Reinhart absent.

XI. EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Next COE Meeting.

Mr. Johnson stated that the next COE meeting would be the first Thursday in January 2012.

XI.b.

DISCUSSED: Ethics Awareness Day.

Commissioner Harbison complimented staff and fellow COE members for a successful Ethics Awareness Day.

XI.b. – CONTINUED

Mr. Johnson said that staff had received great feedback, and he complimented Ms. Rogers on her achievements.

XII. **PUBLIC COMMENTS** – None

XIII. **ADJOURNMENT**

At 4:59 p.m., the chair declared the meeting adjourned.

APPROVED:

Edward Rodgers

Chair/Vice Chair