

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

July 11, 2013

**THURSDAY
1:33 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Manuel Farach, Esq., Chair
Robin N. Fiore, Ph.D., Vice Chair
Patricia L. Archer
Daniel T. Galo, Esq.
Ronald E. Harbison, CPA - Absent

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, Esq., COE Executive Director
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Executive Director Steven Cullen, Esq., stated that a quorum existed.

Chairman Manuel Farach stated that electronic devices should be turned off or silenced. He added that anyone wishing to speak should submit a public comment card.

IV. APPROVAL OF MINUTES FROM JUNE 6, 2013

MOTION to approve the June 6, 2013, minutes. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

V. RESIGNATION OF COMMISSIONER RONALD HARBISON

Mr. Cullen stated that Commissioner Ronald Harbison had sent a June 27, 2013, e-mail message to the Commission on Ethics (COE), tendering his resignation.

Commissioner Patricia Archer said it was unfortunate that Commissioner Harbison had inadvertently made a political campaign contribution; however, she admired his willingness to promptly resign. She added that COE members were subject to the same rules and regulations as those holding other government positions.

Vice-Chair Robin Fiore said that she honored Commissioner Harbison's service to the COE and to the community. She said that she respected his decision to place the COE ahead of self-justification. She added that she appreciated working with him, and she wished him the best.

Alan Johnson, Esq., former COE executive director, said he believed that no other volunteer commissions in the county required as much member commitment as that of the COE. He said that he wanted to recognize Commissioner Harbison's dedication, adding that he was insightful and always contributed to COE matters.

Bruce Reinhart, Esq., former COE member, said that he agreed with the previous comments. He added that the community was honored to have had Commissioner Harbison as a COE member.

Commissioner Daniel Galo said that he agreed with the accolades. He stated that he would miss his input, and he wished him well.

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VI. DISCUSSION OF FLORIDA STATUTE (FS) 286.0114, RE: PUBLIC COMMENT AT MEETINGS

Mr. Cullen said that:

- Florida Statute 286.0114 was recently passed giving the public a reasonable opportunity to be heard at public meetings.
- A public comment exception existed when the COE acted in a quasi-judicial capacity.
- Public comment matters previously came before the COE when crafting article VIII., section 4, of the bylaws.
- Staff believed that the bylaw and the chair's discretion in allowing public comments fully complied with the new statute.

Vice-Chair Fiore pointed out that Chairman Farach always ensured that the public was effectively heard before votes were taken.

Chairman Farach commented that it was the COE's policy and practice to allow positive and negative public comments.

VII. COMMISSION ON ETHICS (COE) ORDINANCE INTERPRETATION AUTHORITY

Staff Counsel Megan Rogers said that:

- When discussing Request for Opinion (RQO) 13-006 at the May 2, 2013, meeting, questions were raised whether a subsidiary company would be considered the customer or client of a parent company.
- The RQO 13-006 dealt with whether an elected official could vote on a matter that would benefit a developer who owned property within a condominium association in which the official's outside business had a property management contract.
- The COE had limited authority to interpret the County's Code of Ethics (Code).

VII. – CONTINUED

- When manifest incongruity or obvious inconsistency occurred within a Code ordinance's meaning, the COE could use its interpretive authority to remedy the issue.
- Section 2-443(e)(5)g of the Code dealt with official law-enforcement overtime or extra-duty details. The language related only to certified police agency uniformed external security or extra-duty detail contracted or administered by the agency.
- Staff found that all public safety department uniformed details, such as fire rescue, were similarly contracted and administered.
- Further research and discussion with various entities enabled staff to interpret the Code and rectify the manifest incongruity.
- Section 2-442's definition of customer or client was used in misuse of office and voting conflict issues.
 - The COE's interpretation of customer or client in C11-027 fit within section 2-442's definition.
 - In C11-027, Wellington Equestrian Partners (WEP) had contracts on behalf of Equestrian Sport Productions (ESP) and vice-versa; therefore, the benefit to WEP directly transferred to ESP.
 - In RQO 13-006, a developer's various entities owned 80 percent of a condominium association's property and had brought a redevelopment project before an elected official who provided property management services to the association. The COE had opined that the developer's project was unrelated to the official's property management contract with the condominium and with the benefit received by the developer as a property owner within the association.

Vice-Chair Fiore said that the intervening entities involved in the matter did not change the fact that the official had some type of relationship with the developer.

VII. – CONTINUED

Ms. Rogers stated that the Code did not permit a more thorough review of the relationships. She added that in RQO 13-006, the official could vote on a matter that would benefit the developer; however, she would always be prohibited from voting on a matter in which her outside business received a benefit from the developer in exchange for his benefit.

Commissioner Archer said she disagreed that the official would not receive some benefit by voting on the developer's project.

Ms. Rogers said that:

- A benefit could exist; however, the Code would capture that type of voting conflict.
- The COE could refer the matter to a drafting committee for editing of the Code to cover far-reaching situations.
- The item was placed on the agenda to discuss the Code's language and how it was applied. Staff would bring back RQO 13-006 for review at the August 2013 meeting.

Commissioner Archer suggested that staff evaluate whether the Code's language could be amended to permit a more thorough review of relationships.

Vice-Chair Fiore said that a developer would benefit from contracting with a sitting official, then appearing before the official on another matter.

Commissioner Galo stated that the official's relationship was with the condominium association, and that it was separate and distinct from the developer's relationship with the association.

BOARD DIRECTION:

Chair Farach requested that staff speak with City of Boca Raton counsel, Diana Grub Frieser, Esq., then bring back RQO 13-006 with its accompanying materials.

VIII. PROPOSED SETTLEMENT C13-001

Ms. Rogers said that:

- An August 8, 2013, final hearing on C13-001 was set; however, a negotiated settlement had been reached.
- Staff believed that it was in the public's best interest to dismiss the case against Village of Wellington (Wellington) Mayor Robert Margolis with a Letter of Instruction finding that the alleged violation was inadvertent and unintentional.
- Further staff investigation of C13-001's probable cause hearing found no additional evidence of quid pro quo, or bad/corrupt intent.

Respondent's attorney, Mark Heron, Esq., stated that his client agreed with staff's recommendation to consider approving the consent order and the resulting actions.

Ms. Rogers said that:

- If the COE moved forward to a final hearing, the standard of proof of clear and convincing evidence would have to be established.
- The charges against Mr. Margolis involved accepting a gift over \$100 from a principal or employer of a lobbyist, and accepting anything of value in exchange for official action.
- As advocate, if a final hearing occurred, she would recommend dismissing the allegation that Mr. Margolis used his official position in exchange for something of value.
- The \$2,500 gifted to Mr. Margolis for his legal defense fund was returned to the donor, Neil Hirsch.

Mr. Heron clarified that the donation would be returned if the negotiated settlement were approved.

VIII. – CONTINUED

Ms. Rogers stated that:

- Mr. Hirsch and Wellington Councilman John Greene had requested a COE advisory opinion shortly after the \$2,500 gift was given in June 2012.
- After the COE's opinion that the Wellington Equestrian Preservation Alliance (WEPA) in which Mr. Hirsch served as a board member was the principal employer of a lobbyist, Mr. Hirsch immediately resigned.
- Staff believed that sufficient action had been taken.

Vice-Chair Fiore expressed concern about returning the \$2,500 to Mr. Hirsch after the COE's earlier determination that he could not make the contribution.

Ms. Rogers stated that Mr. Margolis probably would agree to a COE-recommended alternative disposition of the money. She added that the matter would not be discussed with Mr. Hirsch since the COE lacked jurisdiction regarding his actions. She explained that returning the money to Mr. Hirsch would essentially undo the prohibited gift.

Vice-Chair Fiore said that she could accept the alleged violation as inadvertent and that no further evidence was found to validate the misuse-of-office allegation; however, additional discussion was needed about returning the \$2,500.

Commissioner Archer stated that she agreed with the negotiated settlement's terms and with returning the \$2,500.

Chairman Farach stated that if staff could not prove that quid pro quo had existed, those charges should be immediately dropped. He added that apparently discussions had occurred between the complainant and Wellington's counsel; therefore, a statement regarding the charge of employing a lobbyist should be placed into the public record.

Mr. Heron requested that the negotiated settlement be considered together as a package. He said that he had filed a motion to continue the hearing. He added that if the \$2,500 remained with Mr. Margolis and he donated it to charity, he would receive a charitable contribution benefit, unlike returning the money to Mr. Hirsch.

VIII. – CONTINUED

Mr. Cullen noted that a public record would exist since most, if not all, of the evidence was posted on the COE's Web site. He said that clear and convincing evidence was a heightened burden and was relatively difficult for attorneys to prove.

MOTION to accept the negotiated settlement for C13-001 as submitted. Motion by Patricia Archer, and seconded by Daniel Galo.

Vice-Chair Fiore said that item 1 in the negotiated settlement did not reflect the actual facts. She recommended amending the second sentence to state: "The Respondent accepted a prohibited gift of \$2,500, an amount in excess of \$100."

Chairman Farach suggested that since the language tracked the Code, it should state: "In excess of \$100, specifically \$2,500."

Ms. Rogers clarified that the information regarding the \$2,500 was contained in the Letter of Instruction and in the Public Report and Final Order of Dismissal.

Vice-Chair Fiore said that she would withdraw her proposed language.

UPON CALL FOR A VOTE, the motion carried 3-1. Manuel Farach opposed. Ronald Harbison absent.

MOTION to accept the proposed Public Report and Final Order of Dismissal for C13-001 as submitted. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

MOTION to accept the proposed Letter of Instruction for C13-001 as submitted. Motion by Patricia Archer, seconded by Daniel Galo, and carried 4-0. Ronald Harbison absent.

Vice-Chair Fiore asked whether a COE self-initiated process existed to hold Mr. Hirsch accountable for making the \$2,500 contribution.

VIII. – CONTINUED

Ms. Rogers said that:

- Mr. Hirsch's statement to Senior Investigator Mark Bannon was that he did not know that WEPA Executive Director Mat Forrest would be considered a principal or an employer of a lobbyist for purposes of Mr. Forrest's WEPA board membership.
- Staff did not self-initiate to hold Mr. Hirsch accountable since no evidence existed that he knew that Mr. Forrest was a lobbyist, and that he was giving a prohibited gift to Mr. Margolis.
- Mr. Forrest's contention that his WEPA position did not make him a WEPA lobbyist was contested in the underlying facts of the case.

Mr. Bannon stated that although Mr. Forrest was no longer the WEPA executive director, he was still involved in the organization.

(CLERK'S NOTE: See pages 12-18 for continuation of item VIII.)

IX. PROPOSED SETTLEMENT C13-011

Respondent's representative Bruce Reinhart, Esq., said that he would waive holding a private session for the probable cause hearing, and would stipulate that probable cause existed regarding the complaint's three allegations.

Ms. Rogers said that:

- Staff had determined that Gail James knowingly accepted travel expenses valued at over \$100 from a County vendor.
- Mr. Cullen had initiated a complaint, charging that Ms. James violated the Code by accepting the travel expenses and the gift valued at over \$100 from a County vendor, and using her official position to give a special financial benefit to a nonprofit organization in which she served as a director.

IX. – CONTINUED

- Ms. James has stipulated that probable cause existed, has waived her right to a probable cause hearing, and has admitted that she violated the travel expenses and gift law prohibitions.
- Staff has dismissed the misuse-of-office charge. A recommendation was made to issue a Letter of Reprimand and require that Ms. James pay the County a \$163 fine, which was the value of the travel that she had accepted.

Mr. Reinhart said that:

- Ms. James has worked 32 years for the County's Code Enforcement Division without any disciplinary action.
- She had acknowledged receiving the required ethics training after the specific ordinance was enacted.
- Under the relevant legal standard, no requirement existed that Ms. James needed to show intent to violate the Code. It was effectively a strict liability violation.
- He was requesting a finding of unintentional and not inadvertent.

Ms. Rogers said her understanding was that Ms. James had spoken to two supervisors who had approved the travel. She added that this was a learning opportunity for County employees to recognize that Board of County Commissioners' (BCC) waivers were necessary before accepting vendor training.

Vice-Chair Fiore said she believed that the COE had changed the general title of Letter of Reprimand to a Letter of Instruction based on a violation being unintentional.

Ms. Rogers explained that the COE's power to dismiss an admitted violation came under a different section of the inadvertent and unintentional Code language; therefore, a Letter of Reprimand was used.

Commissioner Archer said it was unfortunate that Ms. James did not receive proper advice from her superiors. She said that she wanted to thank her for taking the appropriate action.

IX. – CONTINUED

MOTION to accept the negotiated settlement for C13-011. Motion by Robin Fiore, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

MOTION to accept a finding that the violation was unintentional. Motion by Daniel Galo, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

MOTION to accept the proposed Public Report and Final Order for C13-011. Motion by Robin Fiore, and seconded by Patricia Archer.

Commissioner Archer said that the words, “unintentional/intentional,” on page 2 of the Public Report and Final Order should be changed to reflect the word, unintentional.

Ms. Rogers clarified that when Chairman Farach signed the document, he would circle the word, “unintentional.”

Vice-Chair Fiore said that the \$163.96 fine on the second to last paragraph of page 2 should be \$163 to reflect staff’s recommendation.

AMENDED MOTION to include the change as discussed. The maker and the seconder agreed.

Ms. Rogers stated that she would correct the amount and reprint page 2 for Chairman Farach’s signature.

Mr. Reinhart said that he had no objection to retyping the page and having Chairman Farach sign it in duplicate at a later date.

UPON CALL FOR A VOTE, the amended motion carried 4-0. Ronald Harbison absent.

MOTION to accept the proposed Letter of Reprimand for C13-011 as submitted. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

MOTION to accept the Order for C13-011 as submitted. Motion by Patricia Archer, seconded by Robin Fiore, and carried 4-0. Ronald Harbison absent.

(CLERK’S NOTE: See page 18-23 for continuation of item IX.)

IX. – CONTINUED

Mr. Cullen introduced Investigator Anthony Bennett, and said that he would join the COE for executive sessions.

RECESS

At 2:58 p.m., the chair declared the meeting recessed for executive sessions.

X. EXECUTIVE SESSIONS

RECONVENE

At 4:15 p.m., the meeting reconvened with Commissioners Archer, Farach, Fiore, and Galo present.

(CLERK'S NOTE: Item VIII. was continued at this time. See pages 6-9 for earlier discussion.)

Vice-Chair Fiore read the Public Report and Final Order of Dismissal:

Complainant, Mark Bellisimo, filed the above-referenced complaint on January 6, 2013, alleging a possible ethics violation involving Respondent, Robert Margolis, Village of Wellington mayor.

The complaint alleges that on or about May 17, 2012, Respondent, Robert Margolis, knowingly accepted a gift in excess of one hundred dollars (\$100) from a principal of a lobbyist. An official may not knowingly accept any gift with a value of greater than one hundred dollars (\$100) from any person or business entity that the recipient knows or should know with the exercise of reasonable care is a lobbyist or any principal or employer of a lobbyist.

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VIII. – CONTINUED

On March 14, 2013, the complaint was determined by staff to be legally sufficient. The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on May 2, 2013, with a recommendation that probable cause existed to believe that there was a Code of Ethics violation. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memoranda of Inquiry, Supplemental Investigation and Probable Cause, recommendation of staff, as well as oral statements of the Respondent and advocate. At that time, the Commission also reviewed article V., §2-260.3 of the Commission on Ethics ordinance. At the conclusion of the hearing, the Commission on Ethics determined that probable cause existed to believe that Respondent may have violated the Code of Ethics, and this matter was set for final hearing.

On July 11, 2013, Respondent and advocate submitted a negotiated settlement to the Commission on Ethics for approval. Under this negotiated settlement, Respondent stipulates to the facts as set forth within the Letter of Instruction. Pursuant to the Commission on Ethics ordinance 2-260.1, Public hearing procedures, the Commission has determined that the public interest would not be served by proceeding further, dismisses the complaint, and issues a Letter of Instruction to Respondent.

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Robert Margolis, is hereby dismissed, and a Letter of Instruction is to be issued in this case.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 11, 2013. Manuel Farach, chair.

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VIII. – CONTINUED

Vice-Chair Fiore read the Letter of Instruction:

Mark Bellissimo (Complainant) filed the above-captioned complaint against Robert Margolis, mayor, Village of Wellington (Respondent), alleging violations of the Palm Beach County Code of Ethics, article XIII., §2-443(a), (Misuse of office), §2-443(b), (Corrupt misuse of office), and article XIII., §2-444(a)(1), (Gift law). The complaint alleges, in part, that Respondent accepted a gift in excess of \$100 from a person who is a principal of a lobbyist who lobbies the Village of Wellington (the Village) in violation of the gift law.

Facts and Analysis

Respondent is the elected mayor for the Village. As an elected municipal official in Palm Beach County, Respondent is subject to the Palm Beach County Code of Ethics.

Pursuant to gift disclosure requirements, Respondent submitted a State of Florida quarterly gift disclosure form, (Form 9), indicating that he received a \$2,500 gift on or about May 17, 2012, for his legal defense fund regarding a voter recount in the mayoral race. It was determined through inquiry that the donor, Neil Hirsch, served on the board of the Wellington Equestrian Preservation Alliance (the Alliance), a nonprofit civic organization. At the time the gift was given to Respondent, the Alliance was active in publicly advocating positions regarding the development of an area in the Village known as the Equestrian Preserve. The executive director of the Alliance, Mat Forrest, is a registered lobbyist for Solarsports Systems, Inc. (Solar). Forrest is an employee of Ballard Partners and has a contract to provide government affairs services to Solar.

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VIII. – CONTINUED

In Forrest's sworn statement to COE Investigator Bannon, he noted that he became involved with the Alliance through his work with Solar. Specifically, Forrest stated that Lou Jacobs, Forrest's primary contact with Solar, tasked him to create an organization to advocate for the preservation of the equestrian area of Wellington. Public records obtained by COE staff demonstrate that Forrest appeared before the Wellington Planning, Zoning, and Adjustment Board on behalf of the Alliance in regards to the development of a parcel of land within the Equestrian Preserve. The Commission has previously opined that where a person lobbying on behalf of an organization receives compensation for that representation from whatever source, that person is a lobbyist, and the organization is the principal under the Code.

Holding

Sec. 2-444(a) – Gift law states in relevant part:

No County commissioner, member of a local governing body, mayor, or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept, directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows or should know with the exercise of reasonable care is a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells, or leases to the County or municipality as applicable.

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VIII. – CONTINUED

Sec. 2-260.3 – Dismissal of complaints states as follows:

Notwithstanding any other provisions of this division, the Commission on Ethics 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 on Ethics dismisses a complaint as provided in this subsection, the Commission on Ethics shall issue a public report stating with particularity its reasons for the dismissal.

Respondent accepted a prohibited gift from a principal of a lobbyist.

On May 2, 2013, the Commission on Ethics met in executive session and determined that there was probable cause to believe that Respondent may have violated the Palm Beach County Code of Ethics. Prior to the filing of the above-referenced complaint, former COE Executive Director Alan S. Johnson filed a self-initiated complaint against Respondent for accepting a gift in excess of \$100 from the principal or employer of a lobbyist (C12-015).

The Commission is mindful that the facts and circumstances indicate Respondent transparently filed the gift on his State quarterly gift form as required. The \$2,500 donation given by Neil Hirsch to Respondent's legal defense fund was reported at the same time as the prohibited donation in ethics complaint C12-015. The Commission dismissed C12-015 with a Letter of Instruction, advising Respondent that accepting a prohibited gift from a principal of a lobbyist without inquiring as to the status of the donor would result in an actionable violation of the Code.

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VIII. – CONTINUED

The Respondent has testified under oath that 1) he was unaware that the donor served on the board of the nonprofit organization at the time the gift was given and 2) that members of his campaign staff reviewed Welling lobbyist records and confirmed that Hirsch was not personally registered as a principal or employer of a lobbyist. While there is significant evidence to indicate that a compensated lobbyist, Mat Forrest, was lobbying on behalf of the Alliance, Forrest was not registered as a representative of the Alliance. Staff investigation following the Commission's probable cause determination has developed no additional evidence that Respondent had actual knowledge that Hirsch was a director of the Alliance at the time he accepted the gift or that the gift was given in exchange for official action. In addition, Respondent voluntarily returned the prohibited portion of the gift to the donor.

In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of dismissal with this Letter of Instruction. The COE has determined that the public interest would not be served by proceeding further. However, Respondent is again advised, as he was previously in regard to the gift in C12-015 and accompanying Letter of Instruction, that the filing of ethic complaint C13-001 is to serve as notice that actions taken by Respondent in accepting a prohibited gift from a principal of a lobbyist without inquiring as to the status of the donor will result in an actionable violation of the Code. Due to the unique circumstances of this transaction, the matter is appropriately addressed through this Letter of Instruction.

Respondent is hereby instructed to proceed with great caution in the future to ensure that he avoid accepting prohibited gifts and to use due diligence in identifying the status of a donor, whether or not the gift is given directly or indirectly, so as to conform his activities to this Letter of Instruction and to the requirements of §2-444(a)(1) to avoid any future enforcement action. In consideration of this disposition, the Commission also dismisses the allegation that Respondent violated article XIII., sec. 2-444(e), of the Palm Beach County Code of Ethics.

VIII. – CONTINUED

This Letter of Instruction is issued by the Palm Beach County Commission on Ethics in public session on July 11, 2013. Manuel Farach, chair.

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

(CLERK'S NOTE: Item IX. was continued at this time. See pages 9-11 for earlier discussion.)

Vice-Chair Fiore read the Public Report and Final Order:

Complainant, Steven P. Cullen, filed the above-referenced complaint on April 16, 2013, alleging that the Respondent, Ms. Gail James, violated chapter 8, article XIII., section 2-443(a)(f) and 2-444(a) of the Palm Beach County Code of Ethics when, as a Palm Beach County employee, Respondent accepted travel expenses from a vendor of the County, accepted a gift in excess of \$100 from a County vendor, and used her official position to give a special financial benefit to a nonprofit organization where she served on the board of directors.

Pursuant to chapter 2, article V., division 8, section 2-258(a) of the Palm Beach County Code of Ethics, the Commission on Ethics is empowered to enforce the Code of Ethics.

Pursuant to chapter 8, article XIII., section 2-443(f), Accepting travel expenses: No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees, and incidentals from any County or municipal contractor, vendor, service provider, bidder, or proposer as applicable. The Board of County Commissioners or local municipal governing body, as applicable, may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the County or municipality, as applicable, is a member if the travel is related to that membership.

IX. – CONTINUED

Pursuant to chapter 8, article XIII., section 2-444(a), Gift law: No County commissioner, member of a local governing body, mayor, or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept, directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells, or leases to the County or municipality as applicable.

Pursuant to chapter 8, article XIII., section 2-443(a), Misuse of office: An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit not shared with similarly situated members of the general public for any of the following persons or entities:

(7) A civic group, union, social, charitable, or religious organization, or other not-for-profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

On April 26, 2013, the complaint was determined by staff to be legally sufficient. On July 11, 2013, the Respondent stipulated to probable cause, and Respondent and advocate submitted a negotiated settlement, including a Letter of Reprimand, to the COE for approval. Respondent stipulates to the facts and circumstances as contained in the aforementioned Letter of Reprimand.

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IX. – CONTINUED

According to the negotiated settlement and based on the facts as set forth in the Letter of Reprimand, Respondent admits to the allegations contained in counts one and two of the complaint that she violated §2-443(f) and §2-444(a) of the Palm Beach County Code of Ethics. Respondent agrees to accept a Letter of Reprimand and to pay a total of one hundred sixty-three dollars in fines. Count three is dismissed. Pursuant to the Commission on Ethics Ordinance §2-260.1, Public hearing procedures, the Commission finds that the violation was unintentional. As to counts one and two, the Commission assesses a fine of one hundred sixty-three dollars, and the Respondent has been issued a Letter of Reprimand.

Therefore, it is:

Ordered and adjudged that this matter is concluded upon acceptance of the Letter of Reprimand and proof of payment of the aforementioned fine in the amount of \$163.00.

Done and ordered by the Palm Beach County Commission on Ethics in public session on this 11th day of July, 2013. Manuel Farach, chair.

Vice-Chair Fiore read the Order:

In addition to a Letter of Reprimand imposed by the Commission on Ethics, a \$163.00 fine has been imposed. Therefore, it is hereby:

Ordered and adjudged that the Palm Beach County Board of County Commissioners shall have and recover from the Respondent, Gail James (Vorpapel), the sum of \$163.00. Said sum is to be made payable to the Board of County Commissioners in the form of a certified check or money order and to be paid within 30 days of the date of this Order. Said payment shall be sent to the Palm Beach County Commission on Ethics, 300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401.

IX. – CONTINUED

Pursuant to article V., division 8, §2-260.1(g), this Order may be enforced by application to any circuit court of the State of Florida, which shall have jurisdiction to order Respondent to comply with an Order of the Commission on Ethics.

Done and ordered by the Palm Beach County Commission on Ethics in public session on the 11th day of July, 2013. Manuel Farach, chair.

Vice-Chair Fiore read the Letter of Reprimand:

Dear Ms. James,

When the Commission on Ethics met in executive session on March 1, 2013, it found that probable cause existed to believe that you may have violated the Palm Beach County Code of Ethics, specifically §§2-443(a), (b), and (c). On July 11, 2013, you waived your right to a probable cause hearing, stipulated to probable cause, and admitted to violating §2-443(f) and §2-444(a) of the Palm Beach County Code of Ethics. The settlement agreement in this case provides for you to accept this public reprimand.

Chapter 8, article XIII., section 2-443(f), **Accepting travel expenses.** No official or employee shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidental from any County or municipal contractor, vendor, service provider, bidder or proposer as applicable. **The Board of County Commissioners or local municipal governing body, as applicable, may waive the requirements of this subsection by a majority vote of the board or local municipal governing body. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the County or municipality, as applicable, is a member if the travel is related to that membership (emphasis added).**

IX. – CONTINUED

Chapter 8, article XIII., section 2-444, Gift law.

(a)(1) No County commissioner, member of a local governing body, mayor, or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know, with the exercise of reasonable care, is a vendor, lobbyist, or any principal or employer of a lobbyist who lobbies, sells, or leases to the County or municipality as applicable.

(g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item, or promise, or in any other form without adequate and lawful consideration. Food and beverages consumed at a single setting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, §112.3148, Florida Statutes, and the Florida Administrative Code as may be amended.

The facts are as follows:

You are a senior code enforcement officer for Palm Beach County. In October of 2011, the Palm Beach County Board of County Commissioners entered into a contract for services with Federal Property Registry Corporation (FRPC). Vacant Property Registry (VPR) is a wholly-owned subsidiary of FRPC. FRPC is a vendor of Palm Beach County. Specifically, the County contracts with FRPC/VPR to track foreclosed homes, requiring that within 10 days of foreclosure, the lender must pay \$150 to list the property with the company and provide contact information for the bank and a local property maintenance contact. In your official position, you are the County liaison with FRPC and VPR.

IX. – CONTINUED

On January 22, 2013, you were contacted by Thomas Darnell, managing director of VPR, and invited to attend a sales meeting and training in Melbourne, Florida. After seeking and obtaining your supervisor's approval, you attended the training event and accepted travel expenses including a hotel stay and dining costs totaling \$163.96. The Palm Beach County Code of Ethics expressly prohibits employees and officials from accepting travel expenses from a County vendor unless the travel is waived by the Board of County Commissioners. While your travel on County time was approved by your supervisor, you accepted travel expenses from a County vendor in violation of the Code of Ethics. Furthermore, County employees are prohibited from accepting anything of value in excess of \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist, who sells, leases, or lobbies Palm Beach County.

Your actions constituted two violations of the Palm Beach County 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 people's confidence in their government is eroded when they perceive that official actions may be based upon private goals rather than the public welfare. Violations of the Palm Beach County Code of Ethics contribute to the erosion of public confidence and confirm the opinion of those who believe the worst about public employees.

You are hereby admonished and urged to consider the letter and spirit of the Palm Beach County Code of Ethics and apply them in all future actions as a member of any public body to which you may be a part. Sincerely, Manuel Farach, chairman.

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

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

X. - CONTINUED

X.a. C13-010

Vice-Chair Fiore read the Public Report Finding No Probable Cause and Final Order of Dismissal:

Complainant, Patricia Dervishi, filed the above-referenced complaint on April 18, 2013, alleging a possible ethics violation involving Respondent, Susan Whelchel, mayor, City of Boca Raton.

The complaint alleges that Mayor Whelchel failed to disclose a conflict of interest concerning a business relationship that existed between developers of the Archstone Palmetto Park building project and Whelchel Partners, a commercial real estate firm in which her children are principals, prior to voting on matters as a member of the Boca Raton Community Redevelopment Agency (CRA) regarding this project on at least two (2) occasions, as required, in violation of sec 2-443(c), Disclosure of voting conflicts, of the Palm Beach County Code of Ethics. The complaint further alleged that the actions of Respondent by voting on these matters was also in violation of sec. 2-443(a)(3), Misuse of public office or employment, giving a prohibited special financial benefit to Whelchel Partners, and to her children as principals of this business.

Pursuant to chapter 2, article V., division 8, § 2-258(a), of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics.

On May 3, 2013, the complaint was determined by staff to be legally sufficient. The Memorandum of Probable Cause and Memoranda of Inquiry and Investigation, adopted by reference, were presented to the Commission on Ethics on July 11, 2013. At that time, the commission conducted a hearing. The commission reviewed and considered the Memoranda of Inquiry, Investigation, and Memo of No Probable Cause, the recommendation of staff, as well as the oral statement of the advocate. At the conclusion of the hearing, the Commission on Ethics found no probable cause exists, and the complaint was dismissed.

X. - CONTINUED

X.a. – CONTINUED

Therefore, it is:

Ordered and adjudged that the complaint against Respondent, Susan Whelchel, is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 11, 2013. Robin N. Fiore, vice-chair.

(CLERK'S NOTE: The clerk added the language as printed in the Public Report Finding No Probable Cause and Final Order of Dismissal.)

X.b. Complaint (C) 13-013

Vice-Chair Fiore read the Public Report and Final Order of Dismissal:

Complainant, William Cooley, filed the above-referenced complaint on June 17, 2013, alleging a possible ethics violation involving the Town of Palm Beach.

The Respondent listed is the Town of Palm Beach, a governmental entity. The Commission on Ethics has jurisdiction over all County and municipal officials, employees, and advisory board members individually. Among other reasons, the Commission on Ethics does not have jurisdiction over a municipal government as an entity.

Therefore, the Commission on Ethics dismissed the complaint due to no legal sufficiency.

Therefore, it is:

Ordered and adjudged that the complaint against the Town of Palm Beach is hereby dismissed.

Done and ordered by the Palm Beach County Commission on Ethics in public session on July 11, 2013. Manuel Farach, chair.

X. – CONTINUED

X.b. – CONTINUED

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

XI. EXECUTIVE DIRECTOR COMMENTS

XI.a.

DISCUSSED: Office of Program Policy Analysis and Government Accountability (OPPAGA) Update.

Mr. Cullen stated that the OPPAGA team had collected additional information and expected completion of their field work in July 2013. He added that the team anticipated a final report in August 2013.

XI.b.

DISCUSSED: Memorandum of Understanding (MOU).

Mr. Cullen said that an MOU was reached with the Delray Beach Downtown Development Authority to bring it under the COE's jurisdiction. He said that the MOU's paperwork had been completed, and the matter would be presented to the BCC for final approval at its July 16, 2013, regular meeting. He added that the MOU would cover collection of fees for services performed.

XI.c.

DISCUSSED: Commission on Ethics Web Site Update.

Mr. Cullen stated that staff had met with the County's Web engineers to develop and place an interactive e-book format and some analytics on the COE's Web site. He said that the analytics would determine what Web site information was most frequently accessed. He added that the project would take several months to complete.

XI. – CONTINUED

XI.d.

DISCUSSED: Commission on Ethics Training.

Mr. Cullen commented that staff was preparing a new comprehensive video training module, and that the COE members had been e-mailed an outline of proposed topics. He said that the training may exceed eight hours; therefore, staff considered taping the presentation in multiple segments. He stated that the videos, the Code, and various rules would also be provided to the commissioners.

XII. COMMISSION COMMENTS

XII.a.

DISCUSSED: Newly Relocated Commission on Ethics Offices.

Commissioner Archer commented that she liked the new COE offices, and that they were conveniently located.

XI.b.

DISCUSSED: Commission on Ethics Training Manual.

Commissioner Archer said that she had reviewed a written copy of the revised COE training document, and that all topics were thoroughly covered. She added that she looked forward to reviewing the video training module as well.

Mr. Cullen said that he had spoken with Palm Beach County television Channel 20's staff, and that they were ready to begin the video production.

XII. PUBLIC COMMENTS – None

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XIV. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Daniel Galo, seconded by Patricia Archer, and carried 4-0. Ronald Harbison absent.

At 4:46 p.m., the chair declared the meeting adjourned.

APPROVED: 

Chair/Vice Chair