

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

**MARCH 5, 2015**

**THURSDAY  
1:30 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

- I. CALL TO ORDER**
- II. ROLL CALL**

**MEMBERS:**

Salesia V. Smith-Gordon, Chair  
Michael S. Kridel, Vice Chair  
Clevis Headley  
Michael F. Loffredo  
Carmine A. Priore - Absent

**STAFF:**

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator  
Anthony C. Bennett, COE Investigator  
Steven P. Cullen, Esq., COE Executive Director  
Christie E. Kelley, Esq., COE Staff Counsel  
Gina A. Levesque, COE Intake Manager

**ADMINISTRATIVE STAFF:**

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

- III. INTRODUCTORY REMARKS – None**

**IV. APPROVAL OF MINUTES FROM FEBRUARY 5, 2015**

**MOTION to approve the February 5, 2015, minutes. Motion by Clevis Headley, seconded by Michael Kridel, and carried 4-0. Carmine Priore absent.**

Steven Cullen, COE Executive Director, said that:

- Two executive sessions would be conducted in the Board of County Commissioners chambers.
- The sessions would not be recorded by the County's TV Channel 20; however, an audio recording would be made.
- The parties agreed to waive confidentiality so the sessions would be heard together.

**RECESS**

**At 1:32 p.m., the chair declared the meeting recessed for an executive session.**

**V. EXECUTIVE SESSION**

**RECONVENE**

**At 2:30 p.m., the meeting reconvened, and at Chair Smith-Gordon's request for a roll call, Vice Chair Michael Kridel and Commissioners Clevis Headley and Michael Loffredo were present.**

**V.a. C15-001**

Vice Chair Michael Kridel read the following Public Report and Final Order of Dismissal as discussed during the executive session:

Complainant, Steven P. Cullen, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on January 8, 2015, alleging that Respondent, Hal Valeche, Palm Beach County Commissioner, violated §2-444(a)(1) of the Palm Beach County Code of Ethics by knowingly accepting a gift from a person that he knows, or should know, is a lobbyist who lobbies Palm Beach County.

**V.a. – CONTINUED**

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. Respondent and Advocate entered into a negotiated settlement wherein Respondent admitted the violation of §2-444(a)(1) of the Palm Beach County Code of Ethics for knowingly accepting a gift from a person that he knows, or should know, is a lobbyist who lobbies Palm Beach County. The Respondent agreed to accept a Letter of Instruction.

On March 5, 2015, the negotiated settlement was presented to the COE for approval. After reviewing the negotiated settlement and all relevant documents associated with the case, the COE approved the negotiated settlement and dismissed the case without a finding of probable cause and issued a Letter of Instruction.

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Hal Valeche, is hereby DISMISSED and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on March 5, 2015.

By: Salesia V. Smith-Gordon, Chair

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

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**V. – CONTINUED**

**V.b. C15-002**

Vice Chair Kridel read the following Public Report and Final Order of Dismissal as discussed during the executive session:

Complainant, Steven P. Cullen, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on January 8, 2015, alleging that Respondent, Donaldson Hearing, a Registered Lobbyist for the firm, Cotleur & Hearing, Inc., violated §2-444(a)(2) of the Palm Beach County Code of Ethics by knowingly giving, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who he knows is an official of the county.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. Respondent and Advocate entered into a negotiated settlement wherein Respondent admitted to giving a gift, in the form of two tickets to the Northern Palm Beach County Chamber of Commerce's Annual Leadership Awards Dinner with a face value of \$350, to a person who he knows is an official of the county. Respondent admitted that the conveyance of this gift could reasonably be perceived as a violation of Section 2-444(a)(2) of the Palm Beach County Code of Ethics, but maintained that any such violation was unintentional and inadvertent. Respondent agreed to accept a Letter of Instruction, attend ethics training, and repay the cost of the gift to the Chamber of Commerce or a charity of his choice.

On March 5, 2015, the negotiated settlement was presented to the COE for approval. After reviewing the negotiated settlement and all relevant documents associated with the case, the COE approved the negotiated settlement and dismissed the case and issued a Letter of Instruction.

**V.b. – CONTINUED**

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Donaldson Hearing, is hereby DISMISSED and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on March 5, 2015.

BY: Salesia V. Smith-Gordon, Chair

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

**VI. PROBABLE CAUSE HEARING (PUBLIC)**

**VI.a. C15-005**

Mr. Cullen said that the respondent waived confidentially and agreed that the COE could hear the case in public session. He added that a negotiated settlement was reached and would be presented for the COE's consideration.

Mark Bannon, COE Senior Investigator, said that:

- The COE received an anonymous complaint letter containing State of Florida Quarterly Gift Disclosure forms (disclosure forms) that were filed by Village of Wellington (Village) Council Member Anne Gerwig for 2012, 2013, and 2014.
- The letter stated that according to the County's Code of Ethics (Code), Ms. Gerwig must file copies of the disclosure forms with the COE.
- Verification indicated that the disclosure forms were not filed with the COE, which was a Code violation.
- When the investigation was completed, Mr. Cullen filed a formal complaint.
- No indication existed that Ms. Gerwig intended to hide any gifts.

## VI.a. – CONTINUED

Christie Kelley, COE Staff Counsel, stated that:

- Ms. Gerwig subsequently filed the disclosure forms for 2012, 2013, and 2014 with the COE once she received the complaint notice.
- Staff recommended that the COE approve Ms. Gerwig's negotiated settlement.
  - Ms. Gerwig agreed to accept a Letter of Instruction for violating the Code, Section 2-444(f)(1).
  - Pursuant to the proposed settlement agreement, the matter would be dismissed without a probable cause finding, and the Letter of Instruction would be issued.

Chair Salesia Smith-Gordon said that Ms. Gerwig could read the following statement into the record:

Thank you for the opportunity to address the commission. I want to express a few facts about the situation. I have not asked an attorney to represent me today as I am not in opposition of this commission and have no intention of challenging your authority in this matter. With that said, please understand the following statement prepared by me.

I do not think this process was necessary. This investigation was prompted by an anonymous complaint requesting whistleblower status and directing the executive director to self-initiate an investigation. *Anonymous'* claim stated that they were using Section 2-447 in fear of retribution. The State of Florida Commission on Ethics does not accept anonymous complaints but you do, based on the whistleblower status.

I do not personally hire or fire anyone. As a member of the Village council, I carry only one-fifth of a vote to hire or fire the city manager and the city attorney. All Village employees work for one of them with a strict prohibition of even directing an employee in my Village charter.

**VI.a. – CONTINUED**

The method used to initiate this complaint is, at best, questionable. *Anonymous* also stated that the County gift forms are required annually, and your executive director has opined that the implication in the statute is that the forms are required quarterly. All of my gifts were reported timely on the form provided to me by the Clerk's Office, at my request. I have been open and transparent in all of my official acts. I have attended annual ethics training.

I do recall, when prompted by this investigation, being told that the COE requires a copy. I do think that I may have been told that you required them annually when the State required them quarterly. There is some confusion on this issue based on my recollection and the actual complaint filed by *Anonymous*. I wrongly assumed that you would receive the information. I think this could have been handled by notifying me of the issue and allowing me to comply at that point. Instead, this has been allowed to continue and to proceed.

When I received the notice from Mr. Cullen on January 20, it stated that a COE advocate was assigned and gave me his contact information; along with that, a date that I should contact Mr. Irwin Block, the COE advocate. I followed those instructions and was unable to reach Mr. Block. At that point, I spoke to Ms. Levesque, who made some rather inflammatory statements to me. This included her questioning whether I had ever been involved in a criminal investigation or a court proceeding before, along with the statement that the wheels of justice turn slowly and that I should take a deep breath and just relax. She stated that this was no big deal and that Mr. Block would be contacting me soon enough.

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## VI.a. – CONTINUED

Following this conversation, I learned that Mr. Block had passed away a few days after this call. After reading his obituary, I am disappointed that I did not get to meet him. He was truly a legal icon, and I would have appreciated having at least met him, even in this situation as odd as that might sound. It also took me two conversations with your staff to actually explain to me that the COE advocate was actually my prosecutor. I had no understanding of this process. My understanding of this process is certainly not coming from a legal position but as an elected official. I do not think that Ms. Levesque understood that an ethics violation is a big deal to an elected official, whether or not it is intentional or actionable. Being called before you is a very big deal to me, and I intend to make sure that it is used in a way that benefits the public.

When I filled out the gift form reports, I followed the written instructions on them. Admittedly, I could have asked my ethics officer if that was sufficient, and I did not. I also did not recall that I had to furnish you a copy of the form myself. I wrongly assumed that the process was complete. When Mr. Bannon first contacted me, I stated that I thought they had received a copy. He informed me that they do not receive them from the State, and further stated that the State does not put them online, but the County does.

In this regard, it does make sense to me that you would want me to send you a copy and the State, because you put them online, and they don't. But I had no knowledge of that situation. I had not contemplated this previously, and do not recall that being presented at any of the training.

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## VI.a. – CONTINUED

The Form 1 Statement of Financial Interest is mailed to the Supervisor of Elections' Office in Palm Beach County. That form is mailed to us by the Supervisor of Elections, and she forwards it to both COEs. The voting conflicts form that I am required to file are given to my clerk, and she files them with the proper authorities. Gift forms are unique in that I am the only one that would know if I had received a reportable gift. Unlike the other two forms, they are less frequent for me, and I followed the instructions that were printed on the form. We even receive courtesy notices from the League of Cities with a link that reminds us when our annual financial interest forms are due, which I appreciate.

I have a job, as most city elected officials do, along with my family obligations, and can get quite busy. The notices are appreciated, but I was not reminded by anyone to make a copy of my State reporting gift forms and send them to you, to the best of my recollection.

Also, I do recall the focus of the gift training to be on what a reportable gift and acceptable gift is, and I do think that I have complied with the letter of the law here. Your statute does not say when specifically it has to be done.

Even when my own ethics officer counseled me that one of the gifts I reported would not necessarily fall under your definition as a reportable gift, I listed it anyway. I believe the more information offered the public is always better than less.

I urge you to consider the facts in this situation and consider offering a COE opinion that states clearly that the forms we fill out according to the instructions on the forms must also be copied to the County COE quarterly, which is not clearly represented in the statute.

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## VI.a. – CONTINUED

I have spoken to many other city-elected officials since this came to my attention, and they were not aware of this requirement either. I have also requested that Wellington offer a link to the COE Web site where the gift forms are displayed, and that has been done. We already displayed election reports there so this seemed like a good place for the public to be able to get this information.

I accept the authority and the service of this commission and agree with the mission statement that you have. I think that you have the authority to dismiss this without the settlement agreement, with the settlement agreement, or continue with an actual hearing. I urge you not to allow this commission to be manipulated by a political agenda cloaked in secrecy and to continue your mission of honesty, integrity, character for all government in Palm Beach County. Respectfully submitted, Ann Gerwig.

Chair Smith-Gordon stated that complaints could be anonymous if they complied with the COE's rules governing them. She added that the information contained in the complaint was accurate.

Ms. Gerwig said that anyone who anonymously wrote a complaint was probably subject to the State's whistleblower statute, but there was no one that she could or would retaliate against.

Mr. Bannon clarified that the whistleblower status was given to particular types of complaints. He added that the COE relied on the documentary evidence that was submitted with the complaint.

Ms. Gerwig stated that:

- The COE's filing requirement was not addressed in the ethics training that she took approximately one week before she received the complaint.
- She was unaware that the COE uploaded complaints onto its Web site.
- She would accept the COE's negotiated settlement.
- She did not want the matter determined privately.

## VI.a. – CONTINUED

- The COE should not consider anonymous complaints regarding a technical violation.
- She received and read the Code during ethics training.

Chair Smith-Gordon said that she agreed that the Code did not state that the disclosure forms should be filed with the COE contemporaneously with the State filing.

Mr. Cullen said that the negotiated settlement implied that the Code required a COE filing contemporaneously with the State filing.

**MOTION to adopt the proposed negotiated settlement. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 4-0. Carmine Priore absent.**

Ms. Levesque stated that the proposed negotiated settlement packet did not contain any changes.

**MOTION to accept the proposed negotiated settlement. Motion by Clevis Headley, seconded by Michael Loffredo, and carried 4-0. Carmine Priore absent.**

**MOTION to accept the Public Report and Final Order of Dismissal as presented. Motion by Michael Kridel, seconded by Clevis Headley, and carried 4-0. Carmine Priore absent.**

Vice Chair Kridel read the following Public Report and Final Order of Dismissal:

Complainant, Steven P. Cullen, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on January 28, 2015, alleging that Respondent, Anne Gerwig, Councilwoman of the Village of Wellington, violated §2-444(f)(1) of the Palm Beach County Code of Ethics by failing to file with the COE a copy of each State of Florida Quarterly Gift Disclosure form filed with the state in 2012, 2013, and 2014.

**VI.a. – CONTINUED**

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. Respondent and Advocate entered into a negotiated settlement wherein Respondent agreed to accept a Letter of Instruction based on violations of §2-444(f)(1) of the Palm Beach County Code of Ethics for failure to file with the COE a copy of each State of Florida Quarterly Gift Disclosure form filed with the state.

On March 5, 2015, a negotiated settlement was presented to the COE for approval. After reviewing the negotiated settlement and all relevant documents associated with the case, the COE approved the negotiated settlement, dismissed the case, and issued a Letter of Instruction.

Therefore, it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Anne Gerwig, is hereby DISMISSED and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on March 5, 2015.

By: Salesia V. Smith-Gordon, Chair.

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

**VII. PROCESSED ADVISORY OPINION (CONSENT AGENDA)**

**VII.a. Request for Opinion (RQO) 15-006**

**PUBLIC COMMENT:** Bart Novack.

**MOTION to approve the consent agenda. Motion by Michael Kridel, seconded by Clevis Headley, and carried 4-0. Carmine Priore absent.**

(CLERK'S NOTE: The motion and vote was inadvertently taken again on page 15.)

**VIII. ITEMS PULLED FROM CONSENT AGENDA – None**

**IX. DISCUSSION RE: AMENDMENT TO ORDINANCE**

Chair Smith-Gordon said that Commissioner Priore should be present to vote on COE ordinance amendments that were submitted for the Board of County Commissioners' (BCC) consideration and that the COE should include other matters that needed BCC approval.

Mr. Cullen stated that on November 5, 2014, the COE voted to submit a proposed draft to the BCC amending the ordinance to allow using hearing officers; however, the COE requested that the submittal be delayed for further discussion.

Chair Smith-Gordon said that discussion was needed regarding vendors and the selection criteria for hearing officers and jurist pools. She added that the COE should consider amending Section 2-444(f)(1) to state that filing the gift law log with the State should be performed contemporaneously with the COE.

Vice Chair Kridel said that he was unsure whether the suggested amendment could be discussed since it was not included as an agenda item.

Chair Smith-Gordon said that the amendment would be addressed later.

John Whittles, Executive Director and President-Elect Designee, Palm Beach County Bar Association (Bar), said that at the Bar's January 2015 board meeting, a suggestion was made that the Bar could select a pool or panel of potential COE hearing officers.

## IX. – CONTINUED

Mr. Cullen said that alternative ordinance language could be crafted to incorporate the Bar's suggestion into the selection process. He added that increasing the minimum qualifications for hearing officers could decrease the applicant pool.

Mr. Whittles commented that allowing the Bar complete independence would give the selection process greater weight. He added that Bar members were required to be either State-licensed attorneys or paralegals with specific licensing.

Commissioner Clevis Headley said that he questioned to the extent to which someone should be familiar with the Code since it was referenced in Section 2.260.1(a)(2) of the proposed ordinance language.

Chair Smith-Gordon noted that most of the COE members were probably unfamiliar with the Code prior to completing training.

Mr. Whittles said that the word, "familiar," could include specialized training and/or certain types of substantive experiences.

Vice Chair Kridel suggested including language making COE training a minimum requirement for Bar members prior to being appointed as hearing officers.

Chair Smith-Gordon suggested reading the proposed amendment.

(This space intentionally left blank.)

## IX. – CONTINUED

Vice Chair Kridel read the proposed language for Section 2.260.1(a):

After a finding of probable cause, a respondent is entitled to a public hearing on the complaint. The respondent may elect to have the hearing conducted by the full Commission, a panel of three Commissioners designated by the Commission Chair, or by a hearing officer selected from a list established by the Palm Beach County Bar Association. For inclusion on the list of designated hearing officers, he/she shall have the following minimum qualifications:

- (1) Be a member, in good standing, of the Florida Bar for at least the preceding five years, and
- (2) Be experienced in matters of governmental ethics including completion of the current version of ethics training of the Palm Beach County Code of Ethics, related ordinances, and the rules and practices of the Palm Beach County Commission on Ethics, and
- (3) Attorneys with prior judicial experience or as a hearing officer, mediator, or special master shall be deemed uniquely qualified.

**MOTION to approve the amended language in Section 2-260.1(a) of the Commission on Ethics ordinance as discussed. Motion by Michael Kridel, seconded by Clevis Headley, and carried 4-0. Carmine Priore absent.**

Mr. Cullen stated that staff would place the proposed ordinance amendment on the BCC's agenda for consideration.

## VII. – CONTINUED

Ms. Levesque advised that a motion was made on item VII.a.; however, a vote was not taken.

**MOTION to approve the consent agenda. Motion by Michael Kridel, seconded by Clevis Headley, and carried 4-0. Carmine Priore absent.**

**X. EXECUTIVE DIRECTOR COMMENTS**

**X.a.**

**DISCUSSED:** COE Annual Reports and National Ethics Awareness Month Poster.

Mr. Cullen said that:

- Staff distributed over 200 COE annual reports to primary users and stakeholders and included them on the COE's Web site.
- A poster was created to remind everyone that March was National Ethics Awareness Month.
  - The poster indicated that 40 percent of workers said that they observed unethical or illegal misconduct on the job.
  - The COE and the Office of Inspector General placed logos on the poster requesting that anyone who witnessed fraud, waste, abuse, or ethics violations report them to the COE.

**XI. COMMISSION COMMENTS – None**

**XII. PUBLIC COMMENTS**

**XII.**

**XII.a.**

**DISCUSSED:** RQO 15-005.

Richard Radcliffe, Executive Director, Palm Beach County League of Cities, commented that Ms. Gerwig diligently filed the disclosure forms with the State and that no one was harmed because she failed to file them with the COE. He said that he agreed with Ms. Gerwig that the matter became a teaching moment for her, but it should not have been treated as though it was a major violation.

**XII.a. – CONTINUED**

Chair Smith-Gordon said that Mr. Radcliffe's points were appreciated; however, Ms. Gerwig had the option to not attend the probable cause public hearing.

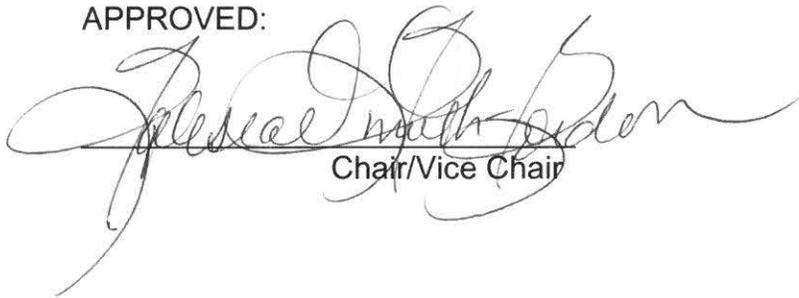
Mr. Radcliffe commented that Ms. Gerwig attempted to act appropriately, but the public may not understand the situation.

Chair Smith-Gordon stated that observers of the situation would now know that a gift disclosure form should be filed with the COE. She added that the COE's task was to ensure that those sections of the Code pertaining to the situation were clear.

**XIII. ADJOURNMENT**

**At 3:48 p.m., the chair declared the meeting adjourned.**

APPROVED:



Chair/Vice Chair