

Palm Beach County Commission on Ethics

Procedures, Rules and Practice Changes - Calendar Year 2013

Several significant events have brought about a number of changes in the procedures, rules and practices of the Palm Beach County Commission on Ethics in calendar year 2013. A new executive director took office in April. A review by the Florida Legislature's Office of Program Policy Analysis & Government Accountability (OPPAGA) was completed in October. The composition of the Commission has also changed with the appointment of two new commissioners. A new Chair and Vice-Chair have been elected. Commission staff changes include a new investigator and soon to be new staff counsel.

OPPAGA FINDING	COE RESPONSE	ADDITIONAL MEASURES
<i>Commission practices sometimes blur the roles of investigators and the staff counsel</i>	The roles of investigators and staff counsel have been administratively clarified. Investigators are responsible for the field and professional work involved in the investigation of inquiries triggered by anonymous information and sworn complaints. Investigators gather information and write reports but do not make recommendations as to probable cause findings. Staff counsel serves as a general legal advisor to the commission. As long as there is no overlap of roles in a particular case, staff counsel may serve as advocate. The volunteer advocate program has been expanded with the addition of new pro bono attorneys.	A comprehensive training program for these attorneys will be delivered in December. If necessary, a full or part-time advocate position may be added.
<i>Commissioners determine both probable cause and the outcome of a final hearing</i>	This change would require legal amendments to the Code of Ethics, Commission on Ethics or the Palm Beach County Lobbyist Registration Ordinance.*	
<i>Conflict of interest provisions continue to be a source of concern for commissioners and others</i>	Commissioners are obligated by Fla. Stat. §286.012 and Palm Beach County Code of Ethics §2-443 to vote on business before the Commission unless grounds for recusal based upon a special financial benefit exist.	On November 7, the Commission passed new Rule of Procedure 1.6 regarding disclosure of other conflicts which do not require recusal. Under this new rule, Commissioners shall disclose such other past, present and current relationships and affiliations of a personal, professional or financial nature. This new rule clarifies when these other disclosures are necessary.
<i>The Commission could benefit from clarifying commissioner disqualification terms and procedures</i>	A party seeking disqualification of a Commissioner at a probable cause hearing or a final public hearing for alleged bias, prejudice or interest may utilize the process in Rule of Procedure 6.4.	On November 7, the Commission passed an amendment to that rule removing a requirement that any such motion be brought at least 5 days prior to the hearing. Parties may now file such a motion "as soon as practicable."
<i>The commission's expanded jurisdiction changes the nature of appointments and could diminish its independence</i>	This change would require legal amendments to the Commission on Ethics Ordinance.*	
<i>Vendors and lobbyists are now subject to the county</i>	This change would require legal amendments to the Palm Beach County Lobbyist Registration Ordinance	

<i>ethics Ordinance but are not required to receive training</i>		
<i>Vendors and lobbyists are now subject to the county ethics Ordinance but are not required to receive training</i>	Live training is offered by staff upon request to vendors and lobbyists under the jurisdiction of the code. Training materials are also available prominently on the new COE website.	Staff is available, in the event that the code is amended to require training for lobbyists and vendors, to provide the same.
<i>The commission could benefit from enhanced commissioner training</i>	Commissioners have been provided with a 4 DVD set containing approximately 7 hours of training completed by staff. Topics include all applicable codes, ordinances, rules, policy and procedure manual, Sunshine Law, advisory opinions, quasi-judicial hearing practices and best practices when serving as a “judge.” Commissioners will review these independently and discuss the material at the next three successive meetings.	Commissioners have also been provided a comprehensive manual of the current codes, ordinances, rules and procedures as well as the Florida Sunshine Manual.
<i>The commission could improve its performance accountability system</i>	Before the OPPAGA report issued, additional performance measures designed to improve accountability were established. Website analytics are used to track patterns of usage in order to enhance online content. Stakeholder surveys are utilized at trainings to evaluate the effectiveness of presentation and gauge the effects of ethics reforms. These data will be analyzed over the next year with the goal of making evidence-based enhancements.	
OTHER CHANGES		
<i>Rule of Procedure</i>	ROP 4.2 has been amended to provide for dismissal of legally insufficient complaints by the executive director. Upon notice of such a finding, any Commissioner may direct that the matter instead be brought for review in executive session. Absent such direction, the Executive Director will issue a final finding of no legal sufficiency. This process will expedite complaint processing and conserve commission resources.	
<i>Policy and Procedure</i>	Recording of executive sessions: PPM Section 4.3.4 has been amended to establish a procedure to record beginning and ending announcements.	

* Under Article VIII, Sec. 8.2 of the Palm Beach County Charter, the Commission on Ethics is established. Charter Sections 8.4 (a), (b) & (c) establish the process for creation of the empowering ordinances. Section 8.4 (d) governs the amendment of the ordinances. Under that section, various entities and persons may propose amendments to the county commission. A drafting (review) committee is then convened to make a recommendation. Any change recommended by the review committee may be adopted by the county commission upon a 4 vote majority. The county commission may make amendments not recommended by a review committee upon an affirmative vote of 5 commissioners.

While the Commission on Ethics may propose amendments, it is without power to change the ordinances. The commission, or other entities, may in the future propose such changes for consideration by the county commission. Absent any changes to the ordinance(s), the Commission is obligated to follow existing law.