

# PALM BEACH COUNTY COMMISSION ON ETHICS RULES OF PROCEDURE

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# **1. GENERAL RULES**

## **1.1 Purpose and Construction of Rules**

- a) These rules are adopted for the following purposes:
  - 1. To establish and explain the practice and procedures followed by the Commission and its employees performing its duties under the law; and
  - 2. To provide specific guidance necessary to encourage and ensure full compliance with all laws administered and enforced by the Commission.
- b) A person's obligation to comply with a requirement or prohibition established by ordinance exists even if this title is silent concerning a statutory requirement.
- c) These rules should always be construed in a manner consistent with all applicable constitutional and statutory requirements.

## **1.2 Authority to Adopt Rules**

These rules are adopted under the authority granted to the Commission on Ethics under Article V, Section 2-257 of the Palm Beach County Code and by any other law administered and enforced by the Commission on Ethics that establishes the Commission's authority to adopt rules.

## **1.3 Amendment to Rules**

Rules of Procedure shall be reviewed as necessary. They may be amended at any regular meeting of the Commission by a majority vote of those present.

## **1.4 Jurisdiction**

The jurisdiction of the Commission on Ethics shall extend to any person required to comply with the Palm Beach County Code of Ethics, Lobbyist Registration and Post Employment Ordinances.

## **1.5 Computation of Time**

- a) This paragraph provides how to compute a period of time prescribed or allowed by this section, by any order of the Ethics Commission or by any applicable ordinance. The day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would be a Saturday, Sunday or a legal holiday, the period is extended until the next day that is not a Saturday, Sunday or legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the Palm Beach County governmental offices are closed for a holiday.

- b) Except where otherwise noted herein, a document may be deemed to be filed or served when it is deposited with the United States Postal Service, properly addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.
- c) A document filed or served by the delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark.

## 1.6 Disclosure of Conflicts

Commissioners should make reasonable efforts to keep informed about matters that could reasonably raise questions about his or her ability to conduct the proceedings impartially and disclose these matters on the record. These matters include: past, present, and current relationships and affiliations of a personal, a professional, or a financial nature. Commissioners should disclose such relationships, but are permitted to abstain from voting and participating in a proceeding **only** if their participation would result in a special financial benefit as described in §2-443(c) *Disclosure of voting conflicts*.

### Historical Changes

Nov 7, 2013 Subsection 1.6 added regarding disclosure of conflicts.

## 2. ADVISORY OPINIONS

### 2.1 Subject of an Advisory Opinion

- a) The Commission will issue a written advisory opinion on the following laws to a person qualified to make a request under paragraph 2.2 of this section (relating to Persons Eligible to Receive an Advisory Opinion):
  - 1. Code of Ethics, Article XIII, Section 2-441 to 2-448 (Ordinance no. 2011-011)
  - 2. Commission on Ethics, Article V, Section 2-254 to 2-260 (Ordinance no. 2011-010)
  - 3. Lobbyist Registration, Article VIII, Section 2-351 to 2-357 (Ordinance no. 2011-039)
  - 4. Post Employment, Article VI, Section 2-141 to 2-146 (Ordinance no. 88-30)
- b) The Commission will not issue an advisory opinion that concerns the subject matter of pending litigation known to the Commission.

### Historical Changes

Dec 11, 2014 Subsection 2.1(a)1-4 updated to reflect the most recent ordinance numbers.

### 2.2 Persons Eligible to Receive an Advisory Opinion

A person who is subject to any of the laws listed in paragraph 2.1(a) of this section may request an opinion regarding the interpretation or application of any of the ordinances under the Commission's jurisdiction to himself or herself.

## 2.3 Request for an Advisory Opinion (Form Requirements)

All requests of advisory opinions must be in writing and contain the following information:

- a) Name, address and telephone number of the requesting party.
- b) Status of the requesting party through which jurisdiction of the Commission is invoked.
- c) A brief fact scenario forming the basis of the request for the advisory opinion. The fact scenario must contain all relevant information for which the requesting party seeks ethical guidance. This includes, but is not limited to, all relationships, personal and contractual, relevant to the requested advisory opinion.
- d) Advisory opinion may be submitted via U.S. Mail, fax, hand-delivered or e-mail directed to ethics@palmbeachcountyethics.com. No request will be processed that does not contain sufficient factual or identification information as required by this section.

## 2.4 Advisory Opinion Intake

- a) All requests for advisory opinions will be initially reviewed by the Executive Director or staff designee in a timely manner.
- b) A written acknowledgment of receipt will be sent to the requesting party by U.S. Mail, fax or e-mail response.
- c) An initial determination of jurisdiction will be made during the intake process.
- d) If jurisdiction is lacking, the requesting party will be sent a declination letter due to the lack of jurisdiction.
- e) If valid jurisdiction is determined, but the face of the request contains insufficient factual information, the requesting party will be contacted and asked for additional relevant information. Response is required within 30 days. The failure of the requesting party to respond with additional information will result in closure of the file.
- f) An advisory opinion request may be withdrawn by the submitting party in writing no later than ten days prior to the public meeting wherein the commission on ethics is to consider the request.

### Historical Changes

Sept 2, 2010 Subsection 2.4(f) added to reflect that once submitted, an advisory opinion request may not be withdrawn by the submitting party.

July 7, 2011 Subsection 2.4(f) revised to say an advisory opinion may be withdrawn by submitting in writing no later than 10 days of meeting.

## 2.5 Processing Advisory Opinions

- a) Once jurisdiction and sufficient factual information are determined to exist on the face of the request, the Executive Director or his designee will make an initial substantive determination based on the Code of Ethics, Lobbyist Registration or Post Employment Ordinances.
- b) Once an initial determination has been made a draft advisory opinion letter will be written and reviewed by the Executive Director (when written by a designee).

- c) The Executive Director, submit a draft advisory opinion or, in the alternative, the initial request for advisory opinion directly to the COE for advice and guidance.
- d) When the facts of the request involve issues substantially similar to previously reviewed advisory opinions, or the plain language of the appropriate County Ordinance directly answers the request without ambiguity, the Executive Director will submit a draft advisory opinion to the Chairperson or Vice Chairperson of the COE who will review the opinion and approve or recommend that it be submitted to the COE for advice, guidance or approval in accordance with rule 2.5(c). If preliminary approval is given, the Executive Director will respond prior to the next regular meeting, subject to consent agenda approval at that meeting.
- e) Opinions set on the consent agenda may be removed during a COE meeting by request of a Commissioner. The opinion will then be discussed and voted on individually in a manner consistent with rule 2.5(c).
- f) All requests for advisory opinion will be processed within a reasonable time.

#### Historical Changes

**April 5, 2012** Subsections 2.5(b) and (d) amended to require the Executive Director to write or review (if written by a designee) draft opinions. Submission of all advisory opinions to the COE is mandatory, not discretionary. Since all opinions are submitted to the COE for review, section (c) is stricken as the section would make submission discretionary.

**April 5, 2012** Language of Subsection 2.5(f) referencing sections 2.7 and 2.5(c) deleted as to processing of opinions.

**April 5, 2012** Subsection 2.5(d) created which sets forth protocols for regular agenda and consent agenda opinions. With regard to consent agenda opinions, review and approval by the Chairperson or Vice Chairperson is required. If not approved, the opinion is removed from the consent agenda and placed on the regular agenda for discussion.

## 2.6 Expedited Responses

When the requesting party so indicates, and the facts support an expedited review of a request for advisory opinion, the Executive Director will confer with the COE Chairperson or Vice Chairperson to determine whether: to set the matter for review at the next scheduled meeting; to set a special meeting of the COE to review the request; or to have the Executive Director respond prior to the next regular meeting.

## 2.7 Advisory Opinion Letter Form

- a) All advisory opinion letters shall contain the following:
  - b) A brief recitation of the factual scenario as contained in the written request.
  - c) The applicable sections of the relevant County Ordinance.
  - d) An opinion as to whether the County Ordinances apply to the requesting party.
  - e) An opinion as to whether the requesting party is/would be in compliance with the applicable County Ordinance.
  - f) If deemed appropriate by the COE, additional comment regarding ethics, appearance of impropriety or similar advice to the requesting party based upon the factual scenario as presented.



- g) Signatures of the Executive Director or COE Staff Counsel.

#### Historical Changes

- Nov 3, 2011 Subsection 2.8 (Advisory Opinion Letter Form) amended to remove signature requirement of both the ED and Chair/Vice Chair and add Staff Counsel. Only one signature required.
- April 5, 2012 Subsection 2.7 (Response by the ED) deleted. The ED does not have independent authority to issue opinions under sec. 2-260.9 which requires "an advisory opinion shall be rendered by the commission on ethics on a timely basis..." (Remaining subsections renumbered)

## 2.8 Publication of Advisory Opinions

Each advisory opinion issued by the Commission shall be numbered, dated and published.

#### Historical Changes

- Oct 4, 2012 Subsection 2.8 amended to remove language about redacting the requestor's name.

## 3. COMPLAINTS-GENERAL RULES

### 3.1 Scope of Section

This section applies to sworn complaint proceedings before the Commission. This section is intended to more clearly define the procedure required by the ordinance and shall be construed to ensure the fair and expeditious determination of a sworn complaint.

### 3.2 Subject Matter of a Sworn Complaint

- a) The Ethics Commission may only consider complaints concerning the following ordinances:
1. Code of Ethics, Article XIII, Section 2-441 to 2-448 (Ordinance no. 2011-011)
  2. Commission on Ethics, Article V, Section 2-254 to 2-260 (Ordinance no. 2011-010)
  3. Lobbyist Registration, Article VIII, Section 2-351 to 2-357 (Ordinance no. 2011-039)
  4. Post Employment, Article VI, Section 2-141 to 2-146 (Ordinance no. 88-30)
- b) The Commission will not consider a complaint regarding:
1. An allegation involving an ordinance outside the jurisdiction of the Commission on Ethics.
  2. An alleged violation that occurred before May 1, 2010, for matters involving Palm Beach County, and before June 1, 2011, for matters involving municipalities within Palm Beach County. For all other public entities an alleged violation that occurred prior to the effective date of contract with the Commission on Ethics.
  3. An alleged violation when the complaint is filed more than two (2) years after the violation is alleged to have occurred, unless a person, by fraud or other devices, prevented discovery of the violation.

- c) The Commission will defer consideration of a complaint regarding:
  - 1. An alleged violation, upon the written request of the State Attorney, U.S. Attorney or the chief of any other law enforcement agency. All investigative records remain confidential and exempt from disclosure in accordance with section 119, Florida Statutes and subject to paragraph 3.3 below during the tolling period.
  - 2. An alleged violation which is the subject of an active criminal prosecution.
  - 3. Deferral of a complaint tolls any period of time prescribed or allowed pursuant to the applicable ordinances.
- d) Where an official or employee of Palm Beach County is alleged to have violated an ordinance within the jurisdiction of the Commission on Ethics and based upon the same set of facts is subject to an ongoing disciplinary action initiated by Palm Beach County, the Commission shall stay consideration of a complaint until the conclusion of the personnel proceeding.
- e) Where the allegations of the complaint are the subject of a personnel proceeding, the statute of limitation is tolled until the termination of said personnel proceeding or the exhaustion of administrative remedies.

#### Historical Changes

- Sept 1, 2011** Subsection 3.2(b)2 updated to include municipality jurisdiction as of June 1, 2011. Ongoing jurisdiction of the county government remains as May 1, 2010. For municipalities, jurisdiction commences on June 1, 2011. In anticipation of additional entities contracting for the services of the COE, the effective date will be the date of contract with that entity.
- Dec 11, 2014** Subsection 3.2(a)1-4 updated to reflect the most recent ordinance numbers.

### **3.3 Public Records Exemption**

- a) All records held by the Commission on Ethics and its staff related to an active investigation are confidential and exempt from disclosure unless and until either:
  - 1. Confidentiality is waived in writing by the respondent; or
  - 2. The Commission orders the complaint dismissed; or
  - 3. The preliminary investigation is complete and a probable cause determination is made by the Commission; or
  - 4. The Commission orders a public hearing.
- b) When confidentiality is waived, the Commission orders the complaint dismissed, the preliminary investigation is complete and a probable cause determination is made by the Commission, or the Commission orders a public hearing, all materials related to the complaint shall become public records available to the public as provided in Chapter 119, Florida Statutes, except to the extent the materials are otherwise exempted from disclosure under the public records law.

- c) The confidentiality provided by this procedure shall not prohibit the Commission or its staff from advising the respondent or the complainant about the status of the complaint proceeding.

### **3.4 Press Inquiries**

All press inquiries regarding a pending complaint should be referred to the Executive Director. Prior to a finding of probable cause, no probable cause or a dismissal of the complaint, the Ethics Commission staff are prohibited from confirming or denying the existence of any complaint regarding any person or department.

### **3.5 Frivolous or Groundless Complaints**

- a) In any case where the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint, the Commission shall order the complaining party to pay any costs and attorney's fees incurred by the Commission and/or the Respondent. A complaint is deemed to be frivolous or groundless when there is a complete absence of any justifiable issue of either law or fact raised by the complainant as defined in Section 57.105, Florida Statutes, or is found to have been filed with malicious intent and with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains materially false allegations.
- b) The determination of the Commission on Ethics regarding whether a complaint is frivolous or groundless is deemed conclusive.
- c) If the Commission on Ethics determines that a filed complaint was frivolous, groundless or with false allegations or reckless disregard, the COE shall order the complaining party to pay any costs and attorneys fees incurred by the Commission and/or the Respondent.

### **3.6 Hearing on Costs and Fees**

Upon the dismissal of a complaint, and upon a written motion by the Executive Director or Respondent for costs and fees on grounds as provided in paragraph 3.5, the Commission on Ethics may set a hearing to determine costs and fees. Costs and Fees hearings will be conducted as follows:

- a) Written requests for costs and fees must be submitted to the Commission within sixty (60) days of dismissal and contain a detailed, itemized list of costs and fees associated with the processing, investigation and defense of the alleged complaint.
- b) Upon receipt of the written request, the Executive Director will, in a timely manner, set the matter for a hearing before the Commission to determine costs and fees.
- c) Upon good cause shown, as described in paragraph 3.9, the costs and fee hearing may be continued.
- d) Upon a finding by the Commission on Ethics to assess costs and fees against the Complainant, the manner of enforcement shall be as described in section J (Restitution).

### **3.7 Dismissal of Violation**

The Commission on Ethics may, at its discretion and at any stage of the process:

- a) Dismiss a complaint upon determining that the public interest would not be served by proceeding further; or
- b) Dismiss a complaint and issue a letter of instruction to the Respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial; or
- c) Dismiss a complaint in accordance with a request from the State Attorney, U.S. Attorney of other law enforcement agency.

### **3.8 Length of Time Between Complaint and Final Order**

The Commission on Ethics shall, within twelve (12) months of the filing of a complaint, render a final order disposing of said complaint unless extended by the Commission for good cause.

### **3.9 Good Cause**

The time period for determination of legal sufficiency and probable cause in complaint proceedings may be extended for good cause. "Good Cause" shall include but not be limited to failure of the Commission on Ethics to hold a regular meeting within the time frame required for a legal sufficiency or probable cause determination; a lack of quorum to make a determination due to the recusal of an ethics commissioner and a timely filed motion for continuance or request for extension of time filed by the Advocate or the Respondent.

## **4. PRELIMINARY INVESTIGATIONS**

### **4.1 Staff Procedures Upon Receipt of a Complaint**

- a) Upon receipt of a sworn written complaint, staff shall stamp on the face thereof the date on which the complaint was received in the Commission office. Each complaint received shall be given a complaint number which shall be entered on the complaint itself. Any document related to the complaint shall be entered into the complaint file.
- b) Within twenty (20) days of a preliminary finding of legal sufficiency, the Executive Director or designee shall forward a copy of the complaint and all documents in support thereof to the Respondent.

Historical Changes

Sept 1, 2011

Subsection 4.1(b) revised to require notification to the Respondent within 20 days of finding legal sufficiency.

#### **4.1.1 Self-Initiated Complaints**

The Inspector General, Executive Director of the Commission on Ethics or the State Attorney may initiate a sworn written complaint with the Commission on Ethics. Such complaint will be deemed legally sufficient.

#### **4.1.2 Preliminary Inquiry of Commission on Ethics**

In determining whether or not legal sufficiency exists to support a self-initiated complaint the Commission on Ethics may undertake a preliminary inquiry into the facts and circumstances involving a possible violation of an ordinance within its jurisdiction. A preliminary inquiry is not subject to public records disclosure.

#### **4.1.3 Preliminary Inquiry Protocols**

- a. Upon receipt of information which may form the basis of a violation, staff may review documents and conduct interviews prior to a finding of legal sufficiency.
- b. After conducting an inquiry, if no legal sufficiency is found, staff will prepare a memorandum of inquiry stating the facts and circumstances supporting its finding. A finding of no legal sufficiency after inquiry is thereafter subject to public records disclosure.
- c. Upon a finding of legal sufficiency, the matter under inquiry will be processed in accordance with Sections 3 and 4 as contained herein.

#### **Historical Changes**

**March 3, 2011** Subsections 4.1.1, 4.1.2 and 4.1.3 regarding self-initiated complaints added.

#### **4.2 Review for Legal Sufficiency and Order of Preliminary Investigation**

- a) Within a reasonable time the complaint will be reviewed by the Executive Director and/or Counsel to the Commission on Ethics and a determination will be made as to legal sufficiency.
- b) In order to be found legally sufficient, a complaint must:
  1. Be in writing and executed on a form prescribed by the Commission on Ethics;
  2. Allege the elements of a violation within the jurisdiction of the Commission on Ethics;
  3. Be based substantially upon the personal knowledge of the Complainant; and
  4. Be signed under oath or affirmation by the Complainant.
- c) After the complaint has been reviewed and found to be in the proper form, the complaint shall be reviewed by the Executive Director or designee in order to determine whether the Commission has jurisdiction over the matter; that is whether it concerns an ordinance under the Commission's jurisdiction. Complaints need not be as precise as would be required by the rules of civil procedure and shall be deemed sufficient if the complainant under oath and substantially upon personal knowledge alleges matters, which, if true, would constitute a violation of an ordinance under the Ethics Commission's jurisdiction.
- d) The Executive Director or designee shall prepare a memorandum regarding the legal sufficiency of all complaints. If the Executive Director or designee finds the complaint to be legally insufficient, the Executive Director or designee will provide the draft memorandum of no legal sufficiency to the Commission.

- e) Commissioners shall have seven (7) days to review the draft memorandum and contact the Executive Director. Upon review of the draft memorandum, a Commissioner may direct the Executive Director to submit the complaint for review in executive session at the next regularly scheduled meeting. Absent such request, the Executive Director or designee shall issue a finding of no legal sufficiency.
- f) Upon a finding of no legal sufficiency by the Executive Director or designee, the complaint, memorandum of no legal sufficiency and all documents related thereto shall become a public record and constitute a public record.
- g) Upon a finding of legal sufficiency and pursuant to Section 112.324, Florida Statutes, the Commission may meet in executive session to determine whether probable cause exists. Upon hearing the matter the commission may find probable cause; dismiss it, or take such other action as may be appropriate. In any case where a complaint is dismissed, the public report and order dismissing the complaint together with the complaint itself and all documents related thereto shall become a public record and constitute a public record.

#### Historical Changes

Nov 7, 2013 Subsection 4.2 amended to allow the ED to administratively dismiss legally insufficient complaints without presentation to the COE in executive session.

### 4.3 Assignment of Advocate

Upon a finding of legal sufficiency the Executive Director will assign an Advocate with the responsibility to oversee the investigation and to present cases to the Commission on Ethics. The Advocate may serve on a volunteer basis.

#### 4.3.1 Advocate Conflict of Interest

At all times during the investigation and presentation of a legally sufficient complaint, the Advocate has an ongoing duty to seek justice without predisposition or bias. In that regard there is an ongoing duty to disclose to the Executive Director any financial, personal or professional interest in the proceedings immediately upon discovery of the conflict.

#### 4.3.2 Replacement of Advocate upon Disclosure of Conflict

Upon disclosure of a conflict, the Executive Director shall immediately replace the Advocate and notify the Respondent.

#### 4.3.3 Applicability of Florida Bar Rules of Professional Conduct

The Advocate shall be governed by *Chapter 4. Rules of Professional Conduct* as promulgated by the Florida Bar.

#### Historical Changes

March 3, 2011 Subsections 4.3.1, 4.3.2 and 4.3.3 regarding conflict of interest added.

#### 4.4 Preliminary Investigations

- a) A preliminary investigation shall be undertaken by the Commission on Ethics of each legally sufficient complaint over which the Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred.
- b) Investigations shall be conducted by staff or by any other person or agency so designated by the Commission on Ethics under the supervision of the Executive Director or designee.
- c) Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related.
- d) If the Commission on Ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall set the matter for a public hearing to be held within one hundred twenty (120) days of the probable cause determination and notify the Complainant and Respondent via certified mail, hand delivery or courier.
- e) If the Commission on Ethics finds from the preliminary investigation no probable cause to believe that a violation has been committed, the Commission shall dismiss the complaint with the issuance of a report to the Complainant and Respondent.

##### Historical Changes

Sept 1, 2011 Subsection 4.4(d) revised to require a public hearing to be automatically set within 120 days of a probable cause determination.

#### 4.5 Withdrawal of Complaints

After a complaint has been filed with the Commission, the Commission may permit the complainant to withdraw the complaint only for good cause shown. Withdrawal shall be requested in writing and signed by the complainant(s). "Good Cause" shall be determined based upon the legal sufficiency or insufficiency of the complaint to allege a violation of an ordinance under the Commission's jurisdiction, the stage of the disposition of the complaint arrived at before the request was received and the reasons given by the complainant for wishing to withdraw the complaint. If withdrawal is permitted, the Commission shall order the complaint dismissed and shall proceed as if the complaint had been found insufficient under subsection 4.2.

#### 4.6 Stay of Proceedings

The Respondent, the Advocate, the State Attorney's Office and the United States Attorney's Office may motion for a stay of the proceedings at any time prior to the commencement of a public hearing regarding a matter before the Ethics Commission if the Respondent is the subject of an active criminal investigation or has been charged by information or indictment with charges arising out of the same factual allegations contained in the complaint.

##### 4.6.1 Referral to other authorities for prosecution

The Commission on Ethics, or the Executive Director on behalf of the Commission, shall refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate.

#### **4.6.2 Notice to Commission of referrals**

The Commission on Ethics shall be notified of a referral made by the Executive Director pursuant to Rule 4.6.1.

#### **4.6.3 Manner of Notice to Commission/Public records exemption**

The COE Intake Manager shall generate a separate case number for any referral by the Executive Director to the state attorney or other appropriate official or agency having authority to initiate prosecution. The referral shall be scheduled for review in executive session at the next regularly scheduled meeting of the Commission. Unless disapproved by a majority of the Commission, the executive session shall remain unpublished and exempt from public records disclosure until such time as the prosecuting authority declines or completes its investigation and notifies the Commission that the matter is no longer exempt from disclosure pursuant to chapter 119, Florida Statutes.

#### **Historical Changes**

Nov 1, 2012 Subsections 4.6.1, 4.6.2 and 4.6.3 regarding referrals added.

#### **4.7 Delegation of Authority**

The Commission hereby delegates to its investigators the authority to administer oaths and affirmations, delegates the authority to issue subpoenas to the Executive Director or Counsel to the Commission and authorizes staff investigators to serve any subpoena issued under the Commission's authority.

#### **4.8 Subpoenas during Preliminary Investigation**

Upon recommendation of the Executive Director, Counsel to the Commission, the Advocate or the Inspector General, the Commission Chair, Co-Chair or other member authorized by the Commission may authorize the issuance of subpoenas or subpoenas duces tecum. Each subpoena shall be signed by the Executive Director, Counsel to the Commission or other member authorized by the Commission and shall state the person, documents, or other things to be subpoenaed. Each subpoena further shall name the person before whom the witness is to give testimony, and shall state in general terms the subject matter of the testimony to be elicited. If documents or other things are to be produced, the subpoena shall describe the same with as much specificity as reasonably practicable. The subpoena shall state clearly on its face that it is issued by the Commission on Ethics in accordance with its authority to investigate breaches of public trust. Such subpoenas shall be issued for investigative purposes only and neither the complainant, the respondent nor their counsel shall be entitled to attend the investigative proceeding at which the witness is to give a sworn statement unless the complainant or the respondent is the person subpoenaed.

#### **4.9 Commencement of Investigations**

- a) A preliminary investigation shall be undertaken of every legally sufficient complaint over which the Ethics Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred.



- b) Investigations shall be conducted by Ethics Commission staff under the direction of the Executive Director.
- c) Investigations shall be limited to the allegations in the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue.

#### **4.10 Wrongful Acts Unrelated to the Complaint**

If during the course of an investigation, evidence of a wrongful act not materially related to the complaint at issue is discovered by an investigator, such evidence shall be reported to the Executive Director and the Inspector General in a separate investigator's report. Upon receipt of the investigator's report containing evidence of a wrongful act not materially related to the complaint at issue, the Executive Director or the Inspector General shall:

- a) As soon as practicable forward evidence of the commission of a crime to the appropriate law enforcement official; or
- b) Forward evidence of the Commission of any other wrongful act to the appropriate disciplinary or law enforcement official as soon as practicable following the conclusion of the preliminary investigation.

#### **4.11 Conduct of Preliminary Investigation**

- a) Investigator Contacts with Potential Witnesses – The investigator shall inform the person being interviewed of the confidential nature of the investigation and of the complaint, unless the respondent has waived confidentiality.
- b) Investigator to be Impartial – An investigator shall be impartial and unbiased in the conduct of the preliminary investigation. An investigator shall collect all evidence materially related to the allegations of the complaint, whether such evidence tends to prove or disprove the allegations. If an investigator feels that for any reason, he or she cannot be impartial or unbiased during the preliminary investigation then such investigator shall so notify the Executive Director and shall immediately discontinue working the investigation.
- c) Investigator's Report – Upon completion of the preliminary investigation, the investigator shall prepare a report for presentation to the Advocate. The report shall contain a synopsis of all pertinent information obtained through interview of witnesses, documentary evidence or other sources that supports the investigator's findings and recommendations.

#### **4.12 Investigation of Facts and Parties Materially Related to Complaint**

The Ethics Commission has the duty to investigate all facts and parties materially related to the complaint at issue.

- a) Facts materially related to the complaint include facts which tend to show:
  - 1. A separate violation of an ordinance under the jurisdiction of the Commission on Ethics by a Respondent other than as alleged in the complaint and consisting of separate instances of the same or similar conduct by Respondent as alleged in the complaint; or

2. A separate violation of an ordinance under the Ethics Commission's jurisdiction by the Respondent from that alleged in the complaint which arises out of or in connection with the allegations in the complaint.
- b) Where facts materially related to the complaint are discovered by the investigator during the course of the investigation, the Executive Director shall order an investigation of them and the investigator shall include them in the investigative report. The Advocate may recommend and the Commission on Ethics may order a public hearing as to those violations of an ordinance under its jurisdiction. From that point in the proceedings until final disposition of the complaint, such facts shall be treated as if they were initially alleged in the complaint at issue.
  - c) A party materially related to the complaint means:
    1. Any other public officer or employee within the same agency as the Respondent who has engaged in the same conduct as that alleged against the Respondent in the complaint at issue; or
    2. Any other public officer or employee who has participated with the Respondent in the alleged violations as a co-conspirator or an aider and abettor.
  - d) Whenever the investigation of the complaint at issue indicates the existence of a party materially related to the complaint, the Executive Director shall order an investigation of that party. The investigator shall maintain a separate investigatory file and prepare a separate investigative report, neither of which shall be made available to the Complainant or the original Respondent. The Advocate may recommend and the Commission may order a probable cause hearing as to those violations which are indicated by the Investigator's report to have been committed by such a party. Separate proceedings from the original complaint at issue shall be commenced against such a party who shall be deemed a Respondent by sending that person a copy of the investigator's report and the Advocate's recommendation not less than fourteen days prior to the hearing. From that hearing until final disposition of the matter, the charges against such a party (Respondent) shall be treated as if they had been included in a complaint filed against such party. If requested or otherwise ordered by the Commission, a separate public hearing shall be held on the matter unless consolidation with the original complaint is ordered.

#### **4.13 Counsel**

- a) Respondent – Respondent may appear on his own behalf or may be represented by a lawyer or other qualified representative. All notices and communications to a Respondent represented by a lawyer or other qualified representative shall be made through the Respondent's lawyer or qualified representative.
- b) Advocate – The Advocate representing the matter before the Commission on Ethics shall be the legal counsel retained by the Commission to serve as Advocate. Should the Advocate have a conflict of interest, the Executive Director may appoint conflict free counsel to serve as the Advocate in any matter.

- c) Complainant – To the limited extent the Complainant is entitled to participate in or observe Ethics Commission proceedings, the Complainant may be represented by legal counsel. All notices and communications to a Complainant represented by counsel shall be made through Complainant's lawyer.
- d) Appearances – Any counselor or qualified representative must file a notice of appearance with the Commission on Ethics.
- e) Qualified Representative – A qualified representative must file a motion, with any notice of appearance, at least five days prior to any appearance before the Commission, stating his or her qualifications to appear as provided in Rule 28-106.106, Florida Administrative Code. The Chair or his or her designee must find that the representative meets the qualifications enumerated in the rule prior to the representative appearing for the Respondent in any proceeding or settlement negotiations.

## **5. PROBABLE CAUSE DETERMINATION**

### **5.1 Advocate's Recommendation**

The Advocate shall review the investigator's report and shall make a written recommendation to the Commission for the disposition of the complaint. If the Advocate recommends that a public hearing be held, the recommendation shall include a statement of what charges shall be at issue at the hearing.

### **5.2 Notice to Respondent**

The Respondent shall be given not less than ten days from the date of mailing of the Advocate's recommendation within which time to file with the Commission a written response to the recommendation. The Respondent may also file a motion in opposition to the proceeding (including motions to dismiss, to strike and for a more definite statement) upon receipt of the Advocate's probable cause recommendation.

### **5.3 Notice of Probable Cause Hearing and Right to Attend**

The Respondent, his or her counsel and the Advocate shall be permitted to attend the hearing at which the probable cause determination is made. Notice of the hearing shall be sent to the Respondent and Advocate at least ten days before the hearing. This time period may be shortened with the consent of the Respondent, or without the consent of the Respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission so long as reasonable notice under the circumstances is given.

### **5.4 Exemption from Public Hearing Requirements of 286.11**

A probable cause hearing is not subject to section 286.11, Florida Statutes. Pursuant to Section 112.324, Florida Statutes, complaints of a local ethics violation remain confidential as a part of

the investigatory process until such time as a probable cause determination is made, unless the Respondent requests in writing that said proceeding be public.

#### Historical Changes

Dec 2, 2010 Subsection 5.4 amended replacing the phrase "alleged violator" with "Respondent"

### **5.4.1 Procedure for Release of Public Records Upon Probable Cause Determination**

When called upon to make a probable cause determination of a legally sufficient complaint, the Commission shall adjourn the public meeting and reconvene in executive session. Upon determination of probable cause or dismissal the Commission shall reconvene the public hearing and announce its decision. At that time, all investigative information is subject to disclosure. If the Commission determines that further investigation is required the investigative information will remain exempt from disclosure until such time as the Commission receives sufficient information and renders a probable cause determination.

#### Historical Changes

Dec 2, 2010 Subsection 5.4.1 added regarding procedure for release of public records upon PC determination.

### **5.5 Scope of Probable Cause Determination**

The Respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Commission, based upon the investigator's report and recommendation of the Advocate, before the probable cause determination.

### **5.6 Probable Cause Determination**

At a hearing to determine probable cause, the Commission: may continue its determination to allow further investigation; may order the issuance of a public report of its investigation if it finds no probable cause to believe that a violation of an Ordinance within its jurisdiction occurred; may order a public hearing in the matter, or may enter into such stipulations and settlements as it finds to be just and in the best interests of the citizens of Palm Beach County. In making its determination, the Commission may consider:

- a) The sufficiency of the evidence against the Respondent as contained in the complaint and the Advocate's probable cause determination;
- b) The admissions and other stipulations of the Respondent, if any;
- c) The nature and circumstances of the Respondent's actions;
- d) The expense of further proceedings and
- e) Such other factors as it deems material to its decision. If the Commission orders a public hearing of the complaint, the Commission shall determine what charges shall be at issue for the hearing.

## 5.7 Notification of Manner of Disposition

Upon the Commission's ordering a public hearing of a complaint or a public report, the Executive Director shall so notify the Complainant and the Respondent in writing.

## 5.8 Setting of Public Hearing

Upon a finding of probable cause to believe a violation has occurred, the commission shall set the matter for a final hearing to be held within one hundred twenty (120) days unless extended by the Commission for good cause based on the request of a party or on its own initiative.

## 5.9 Default

If a Respondent fails to timely file a request for a public hearing or fails to appear at the public hearing, the Ethics Commission may find the Respondent in default and issue an appropriate public report and final order.

### Historical Changes

Sept 1, 2011 Former Subsection 5.9 (Setting of Public Hearing) amended to correct the language setting a public hearing within 90 days of the probable cause determination to automatically be set within 120 days.

Nov 3, 2011 Former Subsection 5.8 (Request for Public Hearing) deleted. Language was irrelevant and inapplicable since cases are automatically set within 120 days of a finding of PC. Remaining subsections renumbered.

# 6. PUBLIC HEARINGS

## 6.1 Public Hearings

Public Hearings may be conducted by the full Commission on Ethics or by a three member panel of the Commission designated by the Chair or his or her designee. Proceedings before the Commission shall be governed by the Rules of Civil Procedure except where otherwise designated herein.

## 6.2 Parties to Public Hearing

The person accused of a violation of an ordinance under the Commission's jurisdiction shall be the only party unless consolidation is granted. The Advocate shall be a full participant in the proceedings and shall present all the evidence relevant to the cause that was produced by the preliminary investigation and such additional evidence as may be obtained through discovery or further investigation.

## 6.3 Consolidation of Cases

The Commission on Ethics may consolidate cases if there are matters which involve identical parties or arise out of related issues of law and fact and if it appears that consolidation would promote the just, speedy and economical resolution of the parties and would not unduly prejudice the rights of any party.

## 6.4 Disqualification of Commissioners

- a) Commission members shall be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final public hearing for bias, prejudice or interest by motion of the Respondent or Advocate but not by the Complainant. A member shall disqualify him or herself because of a financial interest.
- b) Unless good cause is shown, all motions for disqualification shall be filed with the Commission as soon as practicable. The motion shall be accompanied by an affidavit stating the particular grounds.
- c) Unless denied as untimely, the motion shall be ruled on by the Commissioner whose disqualification is sought; the ruling shall be based on the legal sufficiency of the motion and affidavit. If the motion and affidavit are found legally sufficient, the member shall disqualify himself or herself.
- d) Any Commissioner may recuse himself or herself, where to the Commissioner's own knowledge any of the grounds stated in the affidavit accompanying the motion for disqualification exist. The failure of a Commissioner to recuse himself or herself shall not be assignable as error or subject to review.

### Historical Changes

Sept 1, 2011 Subsection 6.4(a) amended to change the word "may" in the first line to the word "shall", include disqualification of a commission member be done by a motion of respondent or advocate for *bias, prejudice or interest*, and distinguish between financial and non-financial disqualification.

Nov 7, 2013 Subsection 6.4(b) amended to clarify commissioner disqualification terms and procedures.

## 6.5 Ex-Parte Communications

A commissioner shall not initiate nor consider any ex-parte communication relative to the merits of a pending complaint by:

- a) A public employee or official engaged in prosecution or advocacy in connection with the matter;
- b) A party to the proceeding or any person who directly or indirectly would have a substantial interest in the proposed action of the Commission or his or her authorized representative or counsel; or
- c) A complainant or any other individual who has personal knowledge of the facts underlying the proceeding, or his or her authorized representative or counsel; Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the Commission in the proceeding or shall prohibit Commissioners who are contacted by any of the above persons from referring them to Commission staff.
- d) A Commissioner who receives such ex-parte communication shall place on the record of the matter all written communications received, all written response to such communications and the substance of all oral communications received and oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party, including the Advocate, desiring to rebut the ex parte communication should be allowed to do so, if a request for the opportunity for rebuttal is made within 10 days after notice of the communication.

## **6.6 Subpoenas Generally**

The Commission on Ethics is empowered to subpoena and investigate matters within its jurisdiction. In the case of a refusal to obey a request for documents or for an interview during an investigation, the Commission may subpoena relevant witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other relevant items. The Commission may delegate to staff the authority to administer oaths and affirmations.

## **6.7 Subpoenas for Discovery**

At any time after the Commission on Ethics orders a public hearing of the matter, the Commission may issue subpoenas to effect discovery upon the written request of Respondent or Advocate. The requesting member shall give the name and address of each witness he or she wishes to have deposed and shall describe with particularity those documents or other items that the person wishes to have the witness produce, bring or deliver pursuant to a subpoena duces tecum. Parties may also obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390 Florida Rules of Civil Procedure. The Chairperson, Vice Chairperson or designated member of the Commission may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

## **6.8 Subpoenas for Public Hearing**

The Respondent and the Advocate shall submit to the Executive Director a list of all witnesses he or she wishes to have subpoenaed to attend the hearing. The lists shall include the correct names and addresses of the witnesses and shall describe with particularity those documents or other items that he or she wishes to have the witness bring to the hearing pursuant to subpoena duces tecum. Subpoenas shall be issued as provided herein.

## **6.9 Enforcement of Subpoenas**

In the case of a refusal to obey a subpoena issued to any person, the Commission on Ethics may make application to any Circuit Court of this State which shall have jurisdiction to order the witness to appear before the Commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Any person who fails to obey the order may be punished as provided by law.

## **6.10 Notice to Law Enforcement**

At least seventy-two (72) hours prior to serving a subpoena, the Executive Director or designee shall provide written notice to the State Attorney and the U.S. Attorney for the Southern District of Florida. The Commission on Ethics shall not interfere with any ongoing criminal investigation or prosecution. If the State Attorney or U.S. Attorney notifies the Commission in writing that the Commission's investigation is interfering with an ongoing criminal investigation or prosecution, the Commission shall suspend service of the subpoena, examination of

witnesses, or other investigative activities and shall stay the proceedings pursuant to the requirements of Section D. paragraph 4.6 of this document.

### **6.11 Motions**

- a) All motions shall be in writing unless made on the record during a hearing, and shall fully state the actions requested and the grounds relied upon. The motion shall include a statement that the movant has conferred with the Advocate and all other parties of record and shall state whether there is any objection to the motion.
- b) The original written motion shall be filed with the Commission and a copy served on all parties or their attorneys. The Commission staff shall send a copy of the motion to the Chairperson.
- c) The Chairperson, Vice Chairperson or member of the Commission designated by the Chairperson, shall conduct such proceedings and make such order as are deemed necessary to dispose of issues raised by motions, but it is not required to hold a hearing on a motion in order to rule upon it.
- d) Every written motion may be accompanied by, or included in, a written memorandum stating the grounds upon which the motion is based. Other parties to a proceeding may, within seven days of service of a written motion, file written memoranda in opposition.

### **6.12 Motions in Opposition to a Proceeding**

Motions in opposition to a proceeding including motions to dismiss, to strike and for a more definite statement may be filed at any time after the Advocate submits his or her probable cause memorandum and must be filed no later than twenty days after service of the notice of public hearing. The Chairperson, Vice Chairperson or member of the Commission on Ethics designated by the Chairperson to dispose of motions shall rule upon the motion in the manner set forth in paragraph 6.11c.

### **6.13 Motions to Dismiss Filed by Advocate**

After probable cause is found and a public hearing is ordered by the Commission and after further investigation or discovery is made by the Advocate, the Advocate may move to dismiss the proceeding if the Advocate concludes that there is insufficient evidence to proceed to public hearing in good faith. Such a motion shall specifically state the grounds upon which it is made.

The motion shall be heard by the Commission at the next regularly scheduled meeting and the public hearing shall be continued pending a ruling by the Commission.

### **6.14 Prehearing Conferences**

The Chairperson, or a member of the Commission designated by the Chairperson, may conduct one or more prehearing conferences for the purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing the possibilities of settlement of the issues, examining exhibits and documents, exchanging names and addresses of witnesses and resolving other procedural issues.



### **6.15 Exchange of Witness Lists**

Unless otherwise ordered by the Chairperson or a member of the Commission designated by the Chairperson as a result of a prehearing conference, the Advocate and the Respondent(s) or counsel for Respondent(s) shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing with a copy being provided to the Chairperson. Names and addresses of witnesses discovered subsequently shall be disclosed to the other party or parties and to the Chairperson as soon as possible. Failure to disclose the name and address of a witness may result in the exclusion of the witness's testimony, according to the rule applied in civil judicial proceedings.

### **6.16 Settlement**

- a) The Commission on Ethics may enter into a settlement agreement at any stage of the proceedings as it finds to be just and in the best interest of the citizens of Palm Beach County.
- b) The Advocate may enter into settlement negotiations but must present all settlement proposals to the Commission for consideration and approval. Upon notification of a proposed settlement agreement, the Chairperson or member of the Commission designated by the Chairperson to dispose of pre-trial matters shall continue the Public Hearing and direct staff to place the matter before the full Commission at the next regularly scheduled meeting.

## **7. PUBLIC HEARING PROCEDURES**

### **7.1 Presentation of the Case**

The Advocate shall present his or her case first. The Respondent may then present his or her case. Rebuttal evidence may be permitted in the discretion of the Commission on Ethics.

### **7.2 Opening and Closing Statements**

Opening and Closing Statements may be presented by the Advocate and the Respondent. The Advocate may make the first statement and the Respondent may follow. Rebuttal by the Advocate may be permitted or may be denied.

### **7.3 Evidence**

- a) Stipulations may be received and are encouraged as to uncontested matters.
- b) Oral evidence shall be taken only on oath or affirmation.
- c) The Respondent and the Advocate shall have the right:
  - 1. To present evidence relevant to the issue;
  - 2. To cross-examine opposing witnesses on any matter relevant to the issue;
  - 3. To impeach any witness regardless of who first called him or her to testify.

- d) Rules of Evidence: The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in and of itself to support a finding. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The Commission shall not allow the introduction into evidence of an affidavit of a person when that person can be called to testify; this shall not preclude the admission of a deposition of such person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.

#### **7.4 Transcript of Public Hearing**

The Public Hearing proceedings shall be recorded by recording instruments or by a court reporter. Respondent may at his or her own expense provide a court reporter or recording instruments. The Commission on Ethics may provide a court reporter. No transcript of the proceedings shall be prepared unless requested by the Commission or the Respondent. If the Respondent requests that a transcript be prepared by a court reporter, the Respondent shall pay the expense of transcription. If the Respondent requests that the Commission prepare a transcript from recording instruments and the Commission grants such request, the Respondent shall pay the Commission the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript.

#### **7.5 Proposed Public Report**

After the conclusion of the hearing, the Respondent and the Advocate may present written proposed public reports, within a time designated by the Chairperson or a member of the Commission designated by the Chairperson. If a proposed public report is filed by the Respondent or the Advocate each proposed finding in the proposal that is rejected shall be accompanied by a statement summarizing the reasons for rejection.

### **8. PENALTY**

#### **8.1 Finding and Public Report**

- a) Upon completion of the public hearing upon a finding of probable cause, the Commission on Ethics shall make a finding and public report as to whether any provision within its jurisdiction has been violated.
- b) When probable cause has been found and the Respondent has defaulted by failing to appear at the public hearing, the Commission on Ethics will make appropriate findings and orders at the next regularly scheduled meeting based upon information within its possession as well as any subsequent investigative information provided to the Commission.

Historical Changes

Sept 1, 2011 Subsection 8.1 amended to reflect that public hearings are not discretionary but automatically set upon a finding of probable cause.

## **8.2 Order Upon Finding of Violation**

- a) Upon a public hearing, if the Commission on Ethics finds, by clear and convincing evidence, that a violation has been committed, the Commission shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The final order shall include a determination as to whether the violation was intentional or unintentional. Findings by the Commission shall be supported by competent, substantial evidence.
- b) If, by Respondent's default, no public hearing is held in the matter, the Commission may make such findings as are consistent with the investigative information and issue appropriate orders.

### **Historical Changes**

- Sept 1, 2011 Subsection 8.2(a) amended to reflect code revision of June 1, 2011 that the penalty rules include reference to the standard of proof required to find that a violation has been committed "by clear and convincing evidence, based upon competent substantial evidence in the record...".
- Oct 6, 2011 Subsection 8.2(a) amended and moved "competent, substantial evidence" from first sentence to a new last sentence to remove the appearance that there were two separate standards of proof.

## **8.3 Enforcement and Penalties**

A finding by the Commission on Ethics of a violation of the Code of Ethics, Lobbyist or Post Employment Ordinances shall subject the person to Public reprimand, a fine of up to five hundred dollars (\$500), or both. In addition, the Commission on Ethics may also order the person to pay restitution when the person or a third party has received a pecuniary benefit as a result of the person's violation.

## **8.4 Rescission of Contracts or Benefits**

- a) If the violation resulted in a contract, grant, subsidy, license, permit, franchise, use, certificate, development order or other benefit conferred by the County, then such contract, grant, subsidy, license, permit, franchise, use, certificate, development order or other benefit may be rescinded or declared void by the Board of County Commissioners.
- b) For the purposes of this section, upon a finding of a violation the Executive Director shall forward a copy of the Commission on Ethics Order to the County Administrator.

## **8.5 Compliance with Commission on Ethics Order**

If a person fails to comply with an order issued by the Commission on Ethics, the Commission may make application to any Circuit Court of this State which shall have jurisdiction to order the violator to comply with the order of the Commission on Ethics. Any violator who fails to obey the order may be punished by the Court.

# **9. APPEALS**

## **9.1 Appeal of Final Order**

Any final order where the Commission on Ethics finds that a violation has been committed, or any advisory opinion issued by the Commission on Ethics, shall be subject to review by writ of

certiorari to the Fifteenth Judicial Circuit Court in and for Palm Beach County. The Commission on Ethics shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure.

## **9.2 Fees**

- a) A fee shall be charged by the Commission on Ethics for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such fee may be waived by the Executive Director if the party requesting the record is indigent.
- b) Costs or fees may not be assessed against the Commission on Ethics in any appeal from a final order or advisory opinion issued by the Commission on Ethics pursuant to Article V, Section 2-260 of the Palm Beach County Code.

## **9.3 Stay**

Unless specifically ordered by the Commission on Ethics or by a court of competent jurisdiction, commencement of an appeal does not suspend or stay a final order or an advisory opinion of the Commission on Ethics the Chairperson, Vice Chairperson or member of the Commission designated by the Chairperson.

# **10. RESTITUTION**

## **10.1 Scope of Authority**

- a) The Commission on Ethics may order restitution against any person or entity covered by the Code of Ethics, Lobbyist Registration or Post Employment Ordinances.
- b) The Commission on Ethics may order restitution for any violation of any ordinance under its jurisdiction where the Respondent or a third party receives a pecuniary benefit as a result of the Respondent's violation of an ethics ordinance.
- c) Restitution may be ordered when the person or a third party has received a pecuniary benefit as a result of the person's violation.

## **10.2 Restitution Proceedings**

- a) The Commission will conduct separate proceedings, where necessary, to determine the amount of restitution.
- b) The Advocate will present evidence regarding the appropriate amount of restitution in a particular case. The amount of restitution cannot exceed the total pecuniary benefit received by the Respondent or a third party as determined by an audit or an investigation.
- c) The Respondent may not present evidence regarding the underlying violation.

## **10.3 Determination of Restitution**

The Commission on Ethics may order restitution for any amount not exceeding the total amount of financial benefit to the Respondent or a third party. The Commission may not order

restitution for prospective financial gain. In making a determination, the Commission may consider the following factors:

- a) The severity of the offense;
- b) The amount of loss suffered by the County as a result of the Respondent's actions;
- c) The Respondent's financial circumstances and his or her ability to pay restitution;
- d) Any other factors the Ethics Commission deems appropriate

#### **10.4 Burden of Proof**

The Advocate has the burden of demonstrating the amount of financial gain by the Respondent and/or any third party as a result of the violation. The burden of proof shall be by a preponderance of the evidence and must be based on substantial competent evidence.

#### **10.5 Settlement Agreement**

The Advocate may enter into settlement negotiations for restitution prior to a restitution hearing but must present all settlement proposals to the Commission on Ethics for consideration and approval. Upon notification of a proposed settlement agreement, the Executive Director shall place the proposed settlement agreement on the next regular Commission on Ethics meeting agenda.

#### **10.6 Order of Restitution**

If, by settlement or separate proceeding, restitution is determined to be owed, the Commission on Ethics shall add restitution to the "Order Upon Finding Violation."

#### **10.7 Enforcement Proceedings**

- a) The Commission on Ethics and the Respondent may enter into a payment plan for the amount contained in the restitution order.
- b) The Commission may make application to any Circuit Court which shall have jurisdiction to order the violator to comply with the order. Any violator who fails to obey the order may be punished by the court.

### **11. RETENTION OF RECORDS**

#### **11.1 Advisory Opinions**

All advisory opinions rendered by the Commission on Ethics shall be numbered, dated, published and posted on the Commission on Ethics website.

#### **11.2 Complaints**

All complaints submitted to the Commission on Ethics and upon a finding of probable cause shall be a public record and the files retained for two (2) years. All complaints for which there was a finding of violation shall be published and posted on the Commission on Ethics website.

### **11.3 Annual Gift Disclosure Report**

All Palm Beach County Officials and Employees are required to report gifts valued in excess of one hundred dollars (\$100).

- a) Officials and Employees identified by State law as Reporting individuals shall continue to report in the manner provide by section 112.3148, Florida Statutes, and a copy of each report shall be filed with, and retained by, the Palm Beach County Commission on Ethics.
- b) All other Officials and Employees shall submit an annual gift disclosure report with the Palm Beach County Commission on Ethics no later than November 1, of each year for the period ending September 30 of each year. The annual gift disclosure report shall be created by the Palm Beach County Commission on Ethics and shall be in a form substantially similar in content as that required by State law.
- c) Reports received under this section shall be public records and maintained by the Commission on Ethics.

## **12. LOBBYIST ORDINANCE ENFORCEMENT**

### **12.1 Failure to Comply with the Lobbyist Registration Ordinance**

If the County Administrator, after a preliminary investigation, determines that a violation of the Lobbying Registration Ordinance has occurred, the matter shall be referred to the Commission on Ethics for further investigation and enforcement.

### **12.2 Treatment of Referrals by the County Administrator**

Referrals of lobbyist violations by the County Administrator under the compliance section of the Lobbyist Registration Ordinance shall be considered sworn and legally sufficient complaints under the Commission on Ethics and Code of Ethics Ordinances.

### **12.3 Penalties**

Upon a finding of violation by the Commission on Ethics the punishment may be imposed as provided in Article VIII, Section 2-357 of the Lobbyist Registration Ordinance.