



Agenda

October 24, 2014 – 10:00 am
Vista Center,
2300 N. Jog Road, Rm 1W-47/50
Hearing Room/Chambers

WORKSHOP

Palm Beach County

Commission on Ethics

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Commissioners

Salesia V. Smith-Gordon, Chair

Michael S. Kridel, Vice Chair

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Christie E. Kelley

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Introduction of Facilitator & Special Guests
- V. Historical Overview of COE
- VI. Roles of Commissioners
 - a. Relating to COE
 - b. Relating to Appointing Entities
- VII. Discussion Points:
 - a. OPPAGA Report and Changes implemented
 - b. Senator Abruzzo's "Ethic's Summit"
 - c. Establishment of COE Standards Book
- VIII. Review of Proposed Changes to COE Rules and By-Laws
- IX. Review of Proposed Changes to COE Ordinances
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.



Palm Beach County Commission on Ethics Was Created Using Several Best Practices; Some Processes Could Be Enhanced

at a glance

Our review of the Palm Beach County Commission on Ethics determined that while the commission was created using several best practices, it could benefit from

- clarifying commissioner and staff roles and responsibilities to better separate investigative, prosecutorial, and quasi-judicial functions;
- increasing awareness of conflict of interest issues in commissioner orientation and training and defining the terms bias, interest, and prejudice in procedures relating to disqualification of members from hearings;
- suggesting consideration of modifications to the county ethics code to address issues related to its expanded jurisdiction over municipalities, lobbyists, and vendors;
- enhancing commissioner training; and
- strengthening its performance accountability system by improving performance measures and developing a strategic plan.

Scope

As directed by the Legislature, this report examines the Palm Beach County Commission on Ethics' budget, operating procedures, and mechanisms for assuring compliance with operating procedures.

Background

From 2006 to 2010, citizens in Palm Beach County witnessed the public corruption prosecution of several elected officials. During this time, local business leaders established an ethics initiative and the state attorney convened a grand jury to address the ethical crisis facing the county. As a result of these and other efforts, the Palm Beach County Board of County Commissioners adopted ordinances in December 2009 to implement the grand jury's recommendations to establish a code of ethics, a county ethics commission, and an office of inspector general, and to strengthen lobbying regulations.^{1,2} In November 2010, county voters approved a referendum that made the county's 38 municipalities subject to the ethics code. In response, the county commission revised the ethics code effective June 2011.³

The commission fulfills numerous responsibilities via its five-member panel and professional staff. The county's ordinance identifies the major responsibilities of the Palm Beach County Commission on Ethics, which include

- overseeing, administering, and enforcing the ethics code;
- investigating ethics complaints;

¹ The 2010 Legislature also appropriated \$200,000 for Palm Beach State College to create the Center for Applied Ethics to provide ethics training and to work with the Commission on Ethics and others in the community.

² Palm Beach County's original lobbyist registration, established in 2003, was revised in 2009 as part of the county's ethics initiative.

³ This revision was made pursuant to local referendum.

- issuing formal advisory opinions to persons who fall under the commission’s jurisdiction;
- training municipal and county officials and employees; and
- proposing changes to the ethics code.

The commission’s responsibilities regarding oversight, administration, and enforcement of the ethics code include specific provisions pertaining to prohibited conduct, acceptance of gifts, anti-nepotism, lobbyist registration, and post-employment. Prohibited conduct that can result in a violation of the code includes the misuse of public office or employment and corrupt misuse of official position.⁴ A lobbyist’s failure to register or the receipt by a government employee or official of certain gifts with a value greater than \$100 from a lobbyist can also result in a violation of the code.⁵

In addition, the commission, along with one delegate each from the state attorney’s office and the public defender’s office for the Fifteenth Judicial Circuit, serves as the Inspector General Committee. The Inspector General Committee selects the inspector general, determines whether or not to renew the inspector general’s term, and participates in the removal of the inspector general.

The commission is composed of five members appointed by the leaders of various civic, educational, and professional associations; commissioners serve staggered four-year terms. The commission is empowered to select an executive director using a competitive process and establishes the director’s salary. The executive director appoints and oversees commission staff, which currently includes a staff counsel, two

⁴ An individual cannot use his/her position when he/she knows or should know with an exercise of reasonable care that it would result in special financial benefit to the individual, his/her spouse, domestic partner, relatives, etc. Corrupt misuse of an official position refers to an official action taken with wrongful intent for the purpose of receiving financial benefit which is inconsistent with the proper performance of one’s public duties.

⁵ No vendor, lobbyist, or principal or employer of a lobbyist who lobbies an advisory board or any county or municipal department that is subject in any way to the advisory board’s authority, influence or advice, shall knowingly give, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is a member of that advisory board.

investigators, and an intake manager who fulfills various functions.⁶ The commission’s Fiscal Year 2013 budget totaled \$589,402, with funding derived from county ad valorem tax revenues. Employee salaries and benefits comprise the bulk of the commission’s expenditures.

Several factors must be considered when evaluating the commission’s performance. The commission has been in full operation for a relatively short period (about three years), and much of its first several months of operation was spent hiring an executive director and staff; developing and adopting bylaws, rules of procedures, and operating processes; and developing training materials and programs.⁷ Therefore, not enough time has elapsed to fully evaluate the commission’s effectiveness.

There are few local government ethics commissions or boards in Florida or other states with which to compare the Palm Beach County Commission on Ethics and benchmark its performance. To identify best practices for local ethics bodies, we examined relevant academic literature and research center publications, reviewed the governing laws and annual reports of other local, state, and federal ethics commissions and boards, and interviewed governmental ethics experts. We then reviewed the commission’s design, policies, and procedures within the context of recommended best practices.

Findings

The commission was created using several best practices and has achieved a number of milestones

Best practices used during the establishment of the Palm Beach County Commission on Ethics include the commissioner selection process, required ethics training for local government officials and employees, and the ability to issue

⁶ The intake manager’s duties include receiving complaints; answering the hotline; maintaining the training schedules; managing the commission’s website; and performing administrative functions related to purchasing, inventory, payroll, and travel.

⁷ The commission’s initial board members were sworn in on February 23, 2010, and its first executive director was selected in April 2010.

advisory opinions. Several features of the commission's complaint process also are consistent with best practices described by ethics experts. In addition to establishing operational policies and procedures, from June 2010 to May 2013, the commission issued 250 advisory opinions and processed 60 ethics complaints.

Palm Beach County's ethics ordinances incorporate several recommended best practices. Experts suggest that the selection of ethics commissioners separate and apart from local elected officials is central to maintaining a commission's independence. The leaders of the following entities each appoint one of the five members of the Palm Beach County Commission on Ethics: the Palm Beach County Association of Chiefs of Police; Florida Atlantic University; the Palm Beach Chapter of the Florida Institute of Certified Public Accountants; the Palm Beach County League of Cities; and local bar associations.

Experts also agree that local ethics commissions should emphasize training and education for those subject to ethics laws. The Palm Beach County Commission on Ethics provides both in-person and online training to individuals covered by the county's ethics code.⁸ The commission also helps educate these individuals through its advisory opinions.⁹ The county's ethics code is a concise document (approximately 12 pages) that cannot cover every possible situation that an elected official or employee might face. Consequently, an individual who is uncertain about interpreting the ethics code can request an advisory opinion concerning his or her specific circumstances.

Some aspects of the commission's complaint process also reflect practices recommended by some ethics experts. (See Appendix A for a detailed discussion of the complaint process.) For example, the commission receives two types of complaints—sworn complaints and unsworn or anonymous

complaints. Allowing the submission of anonymous complaints can encourage individuals to come forward when they have knowledge of an ethics violation. Without anonymity, individuals may fear retaliation for filing a complaint.

In addition, the commission maintains the confidentiality of complaint information until it has determined whether probable cause exists to indicate a violation. Such confidentiality helps to protect respondents from potentially damaging false allegations. Moreover, the commission's ordinance also allows individuals to appeal a commission decision to the circuit court, which further protects the rights of the individual.

Since its inception, the commission has achieved a number of milestones. Initial appointments to the ethics commission were completed in February 2010, and the commission hired an executive director in April 2010. The commission's first steps included adopting by-laws and rules of procedure to guide its operations and decision-making processes. In addition to developing and implementing a complaint processing system, the commission also developed procedures for issuing advisory opinions.

As shown in Exhibit 1, during the period from June 2010 to May 2013, commission staff processed 60 complaints.¹⁰ Of these complaints, 36 (60%) were dismissed for lack of legal sufficiency and 1 was rescinded. Of the 23 complaints that were found to be legally sufficient, 10 were dismissed at probable cause hearings.¹¹ The commission found probable cause that a violation occurred in 9 cases; 5 of these cases resulted in settlement agreements, respondents in 3 of these cases were issued letters of instruction, and 1 complaint was scheduled for a final hearing.

⁸ The commission also provides training to community groups upon request.

⁹ The Palm Beach County Commission on Ethics' ordinance provides that employees, officials, lobbyists, and vendors within the commission's jurisdiction may request an advisory opinion to advise them of the standard of duty under the ethics code that applies to their situation.

¹⁰ Complaint disposition information presented in the exhibit is primarily based on data provided by the commission as of May 1, 2013. However, the disposition of some complaints was re-categorized by OPPAGA staff based on a review of supporting documents and orders. For example, the disposition of several complaints that were legally sufficient but dismissed due to lack of probable cause was refined to indicate that letters of instruction were also issued for these cases.

¹¹ For four complaints, the commission found that while the complaints were legally sufficient, there was not probable cause to believe that a violation occurred and a letter of instruction would be appropriate.

**Exhibit 1
Most Complaints Processed by Commission Staff
from June 2010 to May 2013 Were Dismissed for
Lack of Legal Sufficiency**

Complaint Disposition	2010 ¹	2011 ²	2012	2013	Total
Not Legally Sufficient	7	21	5	3	36
Legally Sufficient – No Probable Cause Found	2	3	4	1	10
Legally Sufficient – No Probable Cause Found, Letter of Instruction Issued	1	0	3	0	4
Legally Sufficient – Probable Cause Found, Letter of Instruction Issued	1	0	2	0	3
Legally Sufficient – Probable Cause Found, Respondent Pled	0	3	1	1	5
Legally Sufficient – Probable Cause Found, Final Hearing Scheduled	0	0	1	0	1
Complaint Rescinded	0	1	0	0	1
Total	11	28	16	5	60

¹ The commission issued its first final order regarding a complaint in August 2010.

² The Palm Beach County Board of County Commissioners adopted changes to the ethics code to include the county’s 38 municipalities effective June 2011.

Source: OPPAGA analysis of Palm Beach County Commission on Ethics complaint data as of May 1, 2013, and review of commission complaint reports and orders.

The commission issued 250 advisory opinions from June 2010 to May 2013. As shown in Exhibit 2, these opinions addressed a wide range of subjects, including charitable solicitations and fundraising, contractual relationships, lobbyist registration, misuse of office, and travel expenses. During our review, commission staff reported that requests for advisory opinions have declined. Staff attributed the decline to increased awareness of the ethics code by county and municipal officials and employees. Moreover, the commission’s advisory opinions provide a body of advice on a range of topics that individuals can reference for information.

**Exhibit 2
Commission Advisory Opinions Have Addressed a
Wide Variety of Subjects**

Subject	Number ¹
Gift law	89
Misuse of office or employment	52
Charitable solicitation/fundraising	27
Contractual relationships	27
Outside employment	18
Jurisdiction of the commission	11
Travel expenses	10
Lobbyist registration	6
Employee discounts	4
Political fundraising/contributions	4
Advisory board member waiver	2
Pension plan – employees/officials	2
Contingency fee prohibition	1
Nepotism	1

¹ The numbers in the exhibit sum to more than 250 because the commission classified four advisory opinions as addressing two subjects.

Source: OPPAGA analysis of Palm Beach County Commission on Ethics data.

During the period from June 2010 to May 2013, commission staff participated in 218 live training sessions for public officials and employees, vendors and lobbyists, and members of community organizations. The commission’s executive director, staff counsel, and lead investigator, all of whom have law degrees, conduct in-person training. The commission also provides training through DVDs and streaming videos available on the commission’s website. Commission staff also audits local governments to ensure that employees have taken required ethics training and have completed and signed training acknowledgement forms.

***Clarification of roles could improve the
commission’s complaint processes***

The Palm Beach County Commission on Ethics’ complaint process includes investigative, prosecutorial, and quasi-judicial functions. Best practices emphasize the importance of separating these functions; that is, assigning different entities to conduct these activities. However, the commission’s procedures and practices may sometimes result in a blurring of these functions.

A related issue arises regarding requirements for the commission to both sit as a probable cause panel and to determine the outcome of a final hearing.

Commission practices sometimes blur the roles of investigators and the staff counsel. A lack of separation between the commission's investigative and prosecutorial functions occurs because its procedures and practices provide for investigators to go beyond gathering facts when completing investigations. Specifically, commission investigators may draw conclusions about or make preliminary recommendations as to the existence of probable cause.¹² In contrast, Florida Commission on Ethics investigators do not make recommendations of probable cause, leaving this function to those prosecuting the case.

In addition, due to its small size, commission staff may serve in different capacities, which results in blurred roles and less separation between key functions. For example, the commission's staff counsel serves as the primary advisor to the commission regarding commission business (e.g., advising the commission regarding policy or procedural matters). However, while the commission often uses volunteer advocates to act as prosecutors, the staff counsel and lead investigator may also serve as prosecutors for complaints during probable cause determinations.^{13, 14}

According to ethics experts, the lack of separation between investigative and prosecutorial functions may dispose commissioners toward accepting staff recommendations and advice as to probable cause. Specifically, commissioners may be more inclined to rely on staff's advice and opinions compared to an outside volunteer advocate since commissioners depend on staff to assist them in ongoing commission business. Using staff in the role of advocates, while allowed by the commission's ordinance, may also raise concerns about the advocate's independence.

To preserve separation of investigative and prosecutorial functions, some experts recommend that a small commission outsource either its investigative or prosecutorial functions. The Florida Commission on Ethics follows this practice and employs its own investigators but relies on the Florida Attorney General's Office to prosecute complaints. During the course of our review, the Palm Beach County Commission on Ethics' executive director reported that he planned to increase the number of volunteer advocates available to serve as prosecutors for cases heard by the commission.

The use of volunteer advocates provides both advantages and disadvantages. Advantages are two-fold: volunteer advocates may be perceived as having greater independence, and their use reduces the commission's costs. Commission staff estimated annual cost savings of \$200,000 from using volunteer advocates.¹⁵ The disadvantages are also two-fold: the use of different volunteers on an infrequent basis may result in an ongoing, steep learning curve and may cause them to depend heavily on commission staff to understand the ethics code and the precedents from prior cases.

Commissioners determine both probable cause and the outcome of a final hearing. The ethics commission's ordinance requires the commission to determine probable cause as to whether the evidence suggests a violation has occurred. After a finding of probable cause, an individual accused

¹² During the course of our review, commission staff reported that investigators no longer make recommendations as to probable cause. However, our review of commission files identified at least one instance in April 2013 where the investigative report included a recommendation as to the existence of probable cause.

¹³ The lead investigator would not act as a prosecutor for complaints he investigated, but rather for those conducted by the commissioner's second investigator. Nevertheless, the lead investigator reviews the final investigative report.

¹⁴ The county ethics commission's ordinance provides that the commission shall retain legal counsel to serve as the advocate and prosecute cases before the commission. The executive director may serve as advocate if he/she is a member of the Florida Bar in good standing. In addition, the commission has established a pro bono volunteer advocate program to prosecute ethics complaints; under the program, private attorneys from the community serve as advocates to earn pro bono hours to report to the Florida Bar.

¹⁵ Estimate is based on a rate of \$275 per hour.

of a violation can negotiate a settlement agreement or request a public hearing that would be conducted by the commission. To date, settlement agreements, rather than public hearings, have been used to resolve most ethics complaints where probable cause was found. The current process, however, may encourage individuals to settle given that the same commissioners who found probable cause will conduct the final hearing.

In contrast, the Florida Commission on Ethics refers cases to the Division of Administrative Hearings (DOAH) if a final hearing is required. The commission could consider recommending changes to the ethics code that could strengthen the ethics complaint process by authorizing hearing officers to conduct final hearings. However, the use of hearing officers would increase commission costs. Currently, DOAH charges \$146 per hour plus travel expenses for hearing officers.

Conflict of interest provisions continue to be a source of concern for commissioners and others

Prevailing state law addresses conflicts of interest in terms of decisions by officials and employees on matters that involve a financial interest. The Palm Beach County Code of Ethics also addresses voting conflict guidelines for government employees and officials. However, Palm Beach County ethics commissioners usually make decisions that do not directly affect financial expenditures like those made by a typical government official or employee who transacts government business, expends public funds, or votes regarding government projects. Rather, commissioners’ decisions usually fall into one of two categories: approving advisory opinions or resolving ethics complaints.

Clarification of terms regarding conflicts of interest may help commissioners as they conduct commission business. Regular disclosure and explanation of prevailing state law and local ordinances may also help the public better understand commission decisions regarding conflicts.

Ethics commissioners express concern regarding potential conflicts that do not involve financial interests. State law defines conflict of interest as “a situation in which regard for a private interest tends to lead to a disregard of a public duty or interest.”¹⁶ The law clarifies the Legislature’s intent to protect the public and establish standards for the conduct of elected officials and government employees where conflict exists.¹⁷ Specifically, state law prohibits a public official from voting on public matters that inure to his or her special private gain or the special private gain of others, such as relatives or business associates.¹⁸

Given the proximity of commissioners to the community they serve, it is not surprising that a commissioner might know someone accused of an ethics violation or someone seeking an advisory opinion. Even with no financial interest at issue, a commissioner could desire to recuse or disqualify him- or herself to avoid even the appearance of a conflict.

To address conflict of interest and related questions, the Palm Beach County Commission on Ethics sought clarification from the Florida Commission on Ethics and the Florida Attorney General’s Office, although neither entity has direct authority over the commission. The Attorney General’s Office advised commissioners that state law requires officials to recuse themselves when they or a member of their family would gain financially by voting on a matter before them.¹⁹

Thus, commissioners have determined that if issues do not meet the threshold of a financial interest, they cannot recuse themselves from voting even if they know the parties involved. However, commissioners continue to express concern about and find themselves subject to criticism because of perceived conflicts of interest in adjudicating complaints and approving advisory opinions.

¹⁶ Section 112.312(8), F.S.

¹⁷ Section 112.311, F.S.

¹⁸ Section 112.3143(3)(a), F.S.

¹⁹ Section 112.3143, F.S.

The commission could benefit from clarifying commissioner disqualification terms and procedures. The Palm Beach County Code of Ethics includes standards regarding voting conflicts for government officials and employees. In addition, commission procedures provide guidelines concerning commissioner conflicts that might exist in probable cause or final hearings, proceedings where respondents have protected due process rights. Specifically, commission rules of procedure provide that the advocate or the individual responding to a complaint may file a motion to disqualify a commissioner for bias, interest, or prejudice, accompanied by an affidavit stating the particular grounds for the motion.²⁰

However, concerns exist regarding commission procedures and issues of potential commissioner bias, interest, or prejudice. The terms bias, interest, and prejudice are not defined in commission procedures and may be unclear and interpreted differently based on a participant's experience and expertise.

Further, the procedures specify that unless good cause is shown, all motions for disqualification shall be filed with the commission at least five days prior to the hearing at which the commissioner is expected to participate. Personal bias against a particular individual based on a prior relationship may be readily apparent to someone accused of an ethics violation. However, other issues of bias, interest, or prejudice based on individual or group characteristics may not be apparent until commissioners begin discussing a case. As a result, parties may be unaware of bias or prejudice until a hearing is already in progress. In such a situation, the procedures appear to support the respondent's good cause to raise an issue of bias during a hearing.²¹ Nevertheless, respondents could feel that making an accusation of bias against a commissioner is not in their best

interest given commissioners' overlapping prosecutorial and quasi-judicial roles.

To address conflict of interest concerns, the commission could emphasize such issues in its commissioner orientation and training and provide for explicit definitions of the terms bias, interest, and prejudice in its procedures relating to disqualification of members. In addition, each public and closed commission meeting could commence with the chairperson asking if members have any disclosures concerning the matters before the commission. In this way, commissioners could be on the record about any current or prior relationships with individuals before the commission even if the issues do not meet the financial benefit threshold of a conflict of interest. The commission could also use these disclosure discussions as an opportunity to explain how prevailing state law and local ordinances guide their decisions regarding conflicts of interest.

The impact of recent changes to expand the commission's jurisdiction may warrant consideration of code revisions

Several changes have been made to the ethics code since the county first adopted it in 2009. For example, in 2010, the code was revised to allow for outside employment for county employees under certain circumstances. To date, the most significant change occurred in 2011 when voters made all 38 municipalities subject to the Palm Beach County Code of Ethics. Other changes included adding vendors to the county gift law and expanding prohibited acts to include corrupt misuse of official position. Recent changes may warrant consideration of additional revisions to certain ordinances concerning appointments, lobbyists, and vendors.

The commission's expanded jurisdiction changes the nature of appointments and could diminish its independence. In creating the ethics commission, the county established its independence through the commissioner appointment process. Commissioners were selected by groups whose leaders were not subject to the county ethics code.

²⁰ According to the commission's rules of procedures, the motion shall be ruled on by the commissioner whose disqualification is sought, based on the legal sufficiency of the motion and affidavit.

²¹ The ethics commission's procedures regarding bias, interest, and prejudice are similar to those of other ethics entities, including the Miami-Dade County Commission on Ethics and Public Trust and the City of Jacksonville Ethics Commission.

Expansion of the ethics code to include the county's 38 municipalities means that groups whose leaders are now subject to the code appoint ethics commissioners. For example, the Palm Beach County League of Cities, whose board of directors is composed of municipal officials, appoints one of five commissioners that now oversee ethics in the county's municipalities. Further, the municipal chiefs of police are now subject to the code as is their association president, who appoints an ethics commissioner.²² To preserve its independence, the commission may want to recommend revising the ethics code regarding the appointment process to replace the Palm Beach County League of Cities and the Palm Beach County Association of Chiefs of Police with other independent entities.

Vendors and lobbyists are now subject to the county ethics ordinances but not required to receive training. The county established its initial lobbyist registration ordinance in 2003. In 2009, the county commission amended the lobbying ordinance to bring lobbying enforcement under the Commission on Ethics and added additional lobbying provisions to the ethics code. In 2011, vendors were incorporated into the ethics code gift law provisions.²³

The gift law prohibits government officials and employees from soliciting or accepting gifts of any value in return for or because of the way they perform their duties. The law also prohibits lobbyists, vendors, or principals or employers of lobbyists that lobby local government from giving gifts to officials and employees. The law does not require the reporting of certain gifts, including those received from relatives, domestic partners, or dependents, and awards for professional or civic achievement. Officials or employees who receive a reportable gift in excess of \$100 must submit an annual gift disclosure form or a copy of state-required gift forms. Commission staff reviews gift forms and may initiate an inquiry based on information provided in the forms.

²² The current and one of the two immediate past presidents of the Palm Beach County Association of Chiefs of Police were municipal chiefs of police.

²³ While the commission enforces the lobbyist registration law, staff does not oversee or maintain the registration system.

While the commission offers free training for lobbyists and vendors, the training is not mandatory. Best practices, such as those used by Miami-Dade County, the City of Chicago, and some other local governments, require lobbyists and/or vendors to undergo ethics training prior to engaging in business in their respective jurisdictions. Commission staff indicated that the issue of vendor training could be addressed through local government contracts with provisions to require training as a condition of doing county or municipal business. Alternatively, the commission could consider recommending changes to the county ethics code to require vendors and lobbyists to take the training. The requirement could be modeled after current provisions for government officials and employees, which require initial ethics training and periodic updates.²⁴

The commission could benefit from enhanced commissioner training

Best practices indicate that the effectiveness of government ethics commissions can be enhanced by providing commissioners with the orientation and training required to perform their responsibilities. Palm Beach County Commission on Ethics members reported that when they were initially appointed to the commission, they took the same online training on the ethics code as local government officials and employees. Some commissioners also reported that they attended training that staff provided to various groups, reviewed copies of documents, such as the ethics code, and were offered one-on-one training by the commission's staff.

While it is useful for ethics commissioners to initially attend or view an ethics training session for local officials and employees and read related materials, such training does not provide commissioners with specific guidance in performing their responsibilities. The commissioners should receive additional training

²⁴ Section 2-446 of the Palm Beach County Code of Ethics provides that the "county administrator or municipal administrator as applicable shall establish by policy a mandatory training schedule for all officials and employees which shall include mandatory periodic follow-up sessions. This policy may also address ethics training for entities that receive county or municipal funds as applicable."

that, at a minimum, includes commission procedures for hearing complaints and ensuring due process, including rules of procedure and evidence and issues of bias, prejudice, and interest; methods for understanding and analyzing complaint information and commission precedent; preparation and issuance of advisory opinions; and compliance with open records and sunshine laws.²⁵

Experts also note that it is important for ethics commissioners to have annual continuing education. Such training could serve as a refresher and cover any changes in ethics laws at the state and local level. It could also provide a forum for commissioners to learn about best practices in government ethics programs.

The commission could improve its performance accountability system

Like other government entities, the Palm Beach County Commission on Ethics should be accountable for and provide information to citizens regarding its effectiveness. To do this, the commission needs a performance accountability system and a strategic plan that includes clearly stated goals and objectives that provide expectations for its activities and measures for assessing its progress in meeting these expectations.

The commission includes some performance information in its annual reports, such as the number of

- advisory opinions issued;
- in-person trainings conducted;
- complaints investigated and their disposition; and
- reviews conducted that found governmental entities with employees not in compliance with ethics training requirements.²⁶

²⁵ During the course of our review, the commission began efforts to improve commissioner training. In July 2013, the commission authorized its staff to develop a revised training program for commissioners.

²⁶ During the course of our review, commission staff also began to survey online and in-person training participants to assess their satisfaction with the training experience.

These measures, while useful, primarily assess program outputs, which represent counts of the number of products produced in a single year. Additional information could be provided on the commission's timeliness in completing activities (e.g., the average number of days taken to determine whether a complaint is legally sufficient or the number of days to respond to a request for an advisory opinion) or trends in the number of complaints investigated and advisory opinions issued over a multi-year period. Changes, whether increases or decreases, in complaints or requests for advisory opinions over a multi-year period could be used to direct the commission's education activities or other resources to help government officials and employees gain a better understanding of their responsibilities under the ethics code.

In addition, the commission could collaborate with stakeholders to develop a survey to identify the reasons for changes in commission activities (e.g., increases or decreases in complaints and advisory opinions) and the impact of these and other activities on improving the climate of ethics in the county. For example, a survey could be used to determine the training benefits to local government employees by assessing their knowledge of the ethics code; the percent of local government employees who believe that their agency leaders and supervisors pay attention to ethics; and the percent who believe that individuals caught violating ethics rules are appropriately disciplined. Governments at the federal, state, and local level have used surveys of this kind to gauge the effect of ethics reforms.

The commission should also develop a strategic plan that identifies major issues facing the commission, presents strategies to address the issues, and specifies measurable goals and objectives for evaluating its progress and performance. Developing a strategic plan would also provide commissioners with a means for reaching a consensus regarding the commission's focus in the coming years as well as guidance on what it hopes to accomplish.

Appendix A

The Palm Beach County Commission on Ethics Complaint Process Involves Numerous Steps

A major activity of the Palm Beach County Commission on Ethics is complaint processing. (See Exhibit A-1.) The commission receives two types of complaints—sworn complaints, including self-initiated complaints, and unsworn or anonymous complaints. Sworn complaints are submitted in writing and sworn to before a notary public by the person filing the complaint. The county inspector general, the state attorney, or the commission’s executive director may also self-initiate complaints if they become aware of possible violations. For example, if the inspector general conducts an audit that identifies a violation that falls within the commission’s jurisdiction, the inspector general could refer the matter to the ethics commission.

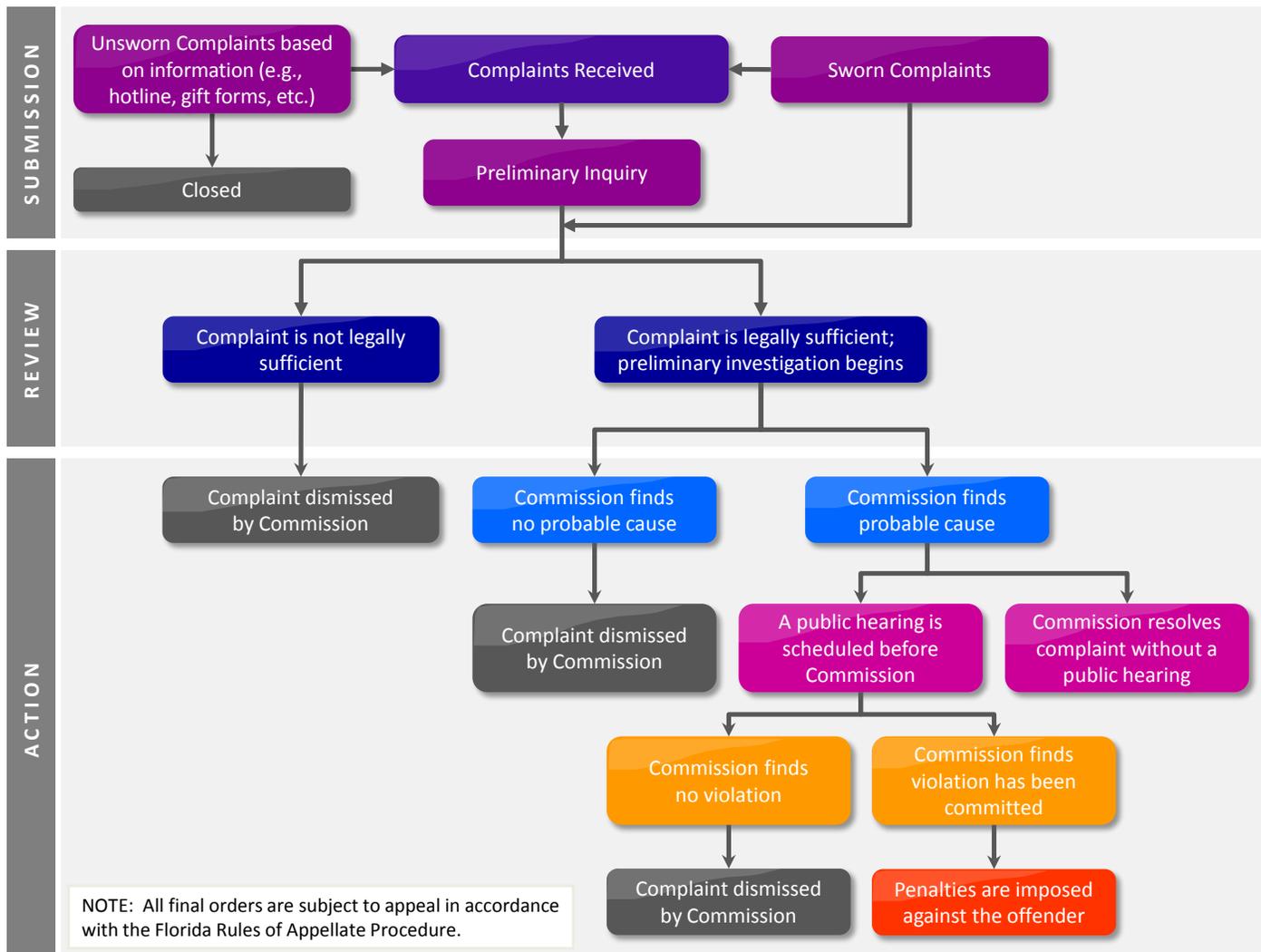
The commission also receives unsworn complaints, which are typically from individuals that contact its hotline or who otherwise report or send information anonymously alleging an ethics violation. Depending on the nature of the complaint, commission staff conducts a preliminary inquiry to gather additional information, if necessary. If an anonymous or unsworn complaint appears to contain information regarding a potential violation, the commission’s executive director self-initiates a sworn complaint.

Following an initial inquiry, complaints must meet two important thresholds in order to move forward. First, the commission’s executive director must determine if the complaint is legally sufficient. Legal sufficiency requires that a complaint be in writing on a form prescribed by the commission, allege that a violation occurred that is within the commission’s jurisdiction, and be sworn before a notary public. For legally sufficient complaints, commission staff investigates the allegations, gathers evidence, takes sworn testimony from witnesses, and writes a report of investigation findings. Staff presents to the commission for dismissal all complaints that do not meet legal sufficiency criteria.

Second, the commission must determine whether probable cause exists that a violation has occurred. Following a completed investigation, the commission’s staff counsel or a volunteer advocate prepares a recommendation to the commission for or against a finding of probable cause. If no probable cause is found, the case is dismissed.

If commissioners determine that the violation was unintended or inadvertent, they could dismiss the case with a letter of instruction to the individual. Otherwise, the commission may enter into a negotiated settlement with the violator or order a public hearing.

Exhibit A-1
The Commission's Complaint Process Includes Many Steps from Submission to Final Action



Source: Palm Beach County Commission on Ethics.



Palm Beach County Commission on Ethics

Commissioners
Robin N. Fiore, Chair
Patricia L. Archer, Vice Chair
Daniel T. Galo
Salesia V. Smith-Gordon
Michael S. Kridel

Executive Director
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111 West Madison Street #312
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Sent via email only to: Collins-gomez.kara@oppaga.fl.gov
twogood.philip@oppaga.fl.gov

Re: *Palm Beach County Commission on Ethics Was Created using Several Best Practices; Some Processes Could Be Enhanced, Draft Report*

Dear Mr. Twogood,

The Palm Beach County Commission on Ethics discussed, in public sessions on September 12 and October 3 2013, your request to provide an official response to the captioned report. Kindly accept this as that response.

The background section of the report captures adequately some of the history leading up to the formation of the commission. It is important to note that many dedicated individuals including the electorate, county officials, interested citizens and groups, commissioners and staff are responsible for today's Commission. In creating and helping the Commission evolve, the singular mission of these stakeholders is to provide an ethically and legally sound framework which promotes public trust in government. That task is sometimes difficult and controversial.

The report correctly observes several dynamics that make the commission unique. It has only been in operation for approximately three years. In crafting the ordinances, establishing rules and procedures, hiring an executive director and staff and developing training programs, the founding commissioners and many others literally created the agency "out of whole cloth." There are only a few similar agencies nationwide. When the agency's small size (five volunteer commissioners and a staff of five) and modest budget (\$589,000 in FY 2013) are considered, its accomplishments to date are impressive. In recognition of these efforts, the National Association of Counties conferred its Achievement Award upon Palm Beach County in 2011 for the ethics initiative.

In establishing the Commission and its procedures, as well as amending the Ordinances and Rules, the goal has always been to utilize best practices. The report correctly notes that such best practices include the commissioner selection practices, requiring training, issuing advisory opinions, following an orderly complaint handling process, maintaining confidentiality, having detailed rules regarding probable cause and final hearings, and ensuring due process rights, including an appellate process.

Thank you for recognizing the "number of milestones" the Commission has achieved since its inception. These accomplishments include the establishment of the Commission according to the best practices discussed above. Also, between June 2010 and May 2013:

- 60 formal complaints were processed.
- 250 advisory opinions were issued in 14 different subject areas
- 218 live training sessions were conducted
- Audits of all local governments were conducted to ensure training compliance

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In response to each of the report's findings:

Finding 1: "Commission practices sometimes blur the roles of investigators and the staff counsel."

Response: This finding describes some of the dynamics inherent in a small staff. Specifically, staff counsel may both serve as both as policy and procedure advisor to the commission as well as serve as advocate. Additionally, staff counsel and the lead investigator (also an attorney) may serve as advocates during probable cause hearings and trials. As long as the roles of advocate and legal advisor to the Commission do not overlap in a given case, the First District Court of Appeal has found no legal prohibition against the consolidation of investigative, prosecutorial and adjudicative authority in a single agency. (McAlpin v. Criminal Justice Standards and Training Commission, Case # 1D12-2819, September 13, 2013)

To preserve independence and save costs, a volunteer advocate program has been created and expanded. This program provides for the use of skilled pro bono attorneys prosecuting cases before the Commission. The Commission may also consider the feasibility of utilizing the services of a full or part-time advocate at a future time.

Budgetary constraints likely prohibit the outsourcing of either investigative or prosecutorial functions. It is estimated that doing so would increase the budget by 100-200%. The investigative staff does not make any recommendation as to findings of probable cause. The Commission believes that the current system best balances competing concerns while maintaining fiscal control.

Finding 2: "Commissioners determine both probable cause and the outcome of a final hearing."

Response: The Commission on Ethics Ordinance sections 2-260 (d) and 2-260.1 require commissioners to perform both functions. The standard for determining probable cause is whether there are reasonably trustworthy facts and circumstances for the Commission to believe that a violation has occurred. The standard at a final hearing is proof by clear and convincing evidence. Commissioners, serving in a quasi-judicial capacity, are fully capable of separating these functions and judging the evidence against the (different) legal standards. Circuit judges perform these differing functions frequently. Outsourcing the trial function to DOAH judges may raise legal issues and/or be cost prohibitive.

There is some sentiment in the Commission both for and against supporting changes to the Ordinances and Rules in favor of outsourcing the trial function. This matter was taken under advisement and staff was directed to further study the issues. This matter may be taken up in the future.

Finding 3: "Conflict of interest provisions continue to be a source of concern for commissioners and others."

Response: State law requires commissioners to vote on business before the Commission unless they meet the grounds for recusal (Fla. Stat. §286.012, Palm Beach County Code of Ethics §2-443). Only a significant statutory change, which the commissioners have no control over, would allow them to recuse themselves for other than financial reasons. The current practice is to disclose relationships even where no financial conflict exists. The commission may consider the adoption of rules to define these disclosure practices.

Finding 4: "The commission could benefit from clarifying commissioner disqualification terms and procedures."

Response: The existing disqualification procedure is in line with the general law of judicial recusal. The commissioner against whom a disqualification motion is directed hears the motion. A commissioner faced with a motion to disqualify filed outside of the time restrictions of the Rule would have discretion to hear the motion. A Rule change permitting a motion to be filed at any time may be considered.

Finding 5: "The commission's expanded jurisdiction changes the nature of appointments and could diminish its independence."

Response: The composition of the Commission fits the purpose for which it is intended. Moreover, any change in the way commissioners are appointed would require a recommendation for such change, the work of a drafting committee and approval by the Board of County Commissioners. Any of the other existing appointing entities (including the local bar associations, the CPA Institute and Florida Atlantic University) could easily have members within their ranks subject to the Code of Ethics.

Finding 6: "Vendors and lobbyists are now subject to the county ethics Ordinance but are not required to receive training."

Response: The countywide Lobbyist Registration Ordinance was effective on April 2, 2012. Live training was provided for vendors and lobbyists before the effective date. A video training has been available through our website since the effective date and is currently being revised. Live training presentations continue to be available upon request. Any change to require training for vendors and/or lobbyists and/or principals, or employers of lobbyists would require a recommendation for such change, the work of a drafting committee and approval by the Board of County Commissioners. The costs associated with providing mandatory training, and maintaining oversight of this function, may be prohibitive. It may be possible to increase the awareness of vendors and lobbyists of the availability of existing training. Staff will undertake to make the access to training materials more visible on the new Commission website. The Commission may revisit this issue in the future.

Finding 7: "The commission could benefit from enhanced commissioner training."

Response: Staff has just completed a comprehensive commissioner training video. This, approximately 8-hour, program includes a comprehensive review of all Ordinances, Rules, Procedures, investigative overview, advisory opinions, quasi-judicial functions, best practices during hearings and the Sunshine Law. All commissioners have been provided with a complete copy of all Ordinances, Rules, Policy and Procedure Manuals and the Government in the Sunshine Manual. Yearly updates and retraining are planned.

Finding 8: "The commission could improve its performance accountability system."

Response: Staff has expanded the performance measures contained in the annual budget documents. Additionally, surveys have been placed on the website to collect user data. Website analytics have been implemented to identify patterns of use. Surveys distributed at trainings collect data on the effectiveness of training and to gauge the effects of ethics reforms. These data will be used to develop enhanced strategic plans.

The Commission, staff and all of the stakeholders in Palm Beach County remain fiercely loyal to the ethics movement. We feel that this agency has accomplished much in its short tenure. Our dedication to continue that effort, and support the effectuation of changes to policies and practices when appropriate, is strong. Thank you for your report and this opportunity to respond. We also appreciate very much the professionalism and courtesy of the team through its leader, Kara Collins-Gomez during this process.

Respectfully Submitted,



Steven P. Cullen
Executive Director
Palm Beach County Commission on Ethics

SPC/gal

Copies to: COE Website, COE Staff, COE Commissioners

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

- [Reports](#) deliver program evaluation and policy analysis to assist the Legislature in overseeing government operations, developing policy choices, and making Florida government more efficient and effective.
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Project conducted by Mary Alice Nye and Tom Roth

R. Philip Twogood, Coordinator

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 4.3.4 has been amended to utilize the services of a Clerk from the Palm Beach County Clerk & Comptroller’s Office to record all executive sessions. The section has also been amended to establish a procedure to record beginning and ending announcements in the event COE staff is called upon to operate recording equipment in the clerk’s absence.	

* 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.

PRINCIPLES AND STANDARDS FOR LOCAL ETHICS COMMISSIONS

Prepared by
Palm Beach County Commission on Ethics

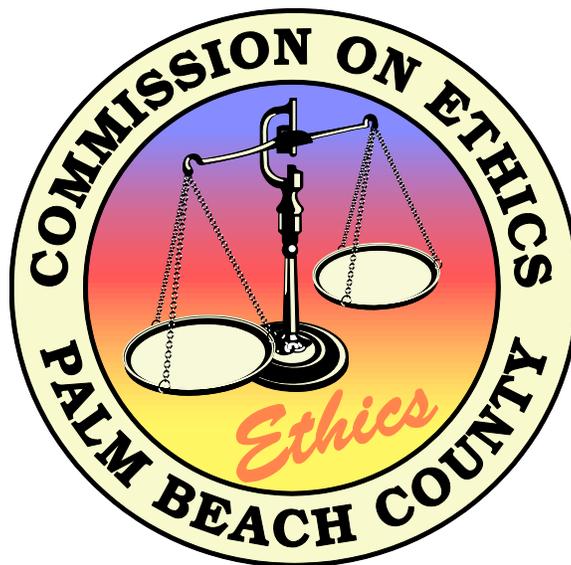


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Introduction: Statement of Principles for Local Ethics Commissions

Maintaining and building public trust in government lies at the foundation of society. Local ethics commissions, created by referenda and/or local laws, are designed to create a defined system of norms for those serving in government. County and municipal employees and local elected officials, by virtue of their employment or election, agree to be held to higher standards. When these key principles are followed, conflicts of interest are prevented and the employee or official places the interest of the government being served over his own. With impartiality, in reality and perception, comes trust. In turn, trust builds confidence in government.

How does a well-meaning electorate, backed by their local government, create a local ethics commission? Although state ethics commissions are fairly common, local operations are relatively new. They provide a unique opportunity to adopt norms and practices which truly best fit the needs of a community. “Home Rule,” expressed by Charters or local laws, provides the general authority to pass ordinances establishing local ethics commissions. This guide is intended to outline best practices and minimum standards for local commissions.¹

Declaration of Title and Statement of Purpose

The enabling law should, in a preamble, establish the following:

- A title for the law,
- The legal authority which permits its creation,
- The scope of applicability,
- The purpose of the law,
- The fact that the law does not “replace or contravene” any other federal, state or local law,
- A statement that covered persons understand that public service is a public trust,
- A declaration that covered persons shall be impartial and devoted to the best interests of the government served,
- A conclusion that covered persons shall act and conduct themselves so as to not give occasion for distrust of their impartiality.

Definition of Words, Terms and Phrases

- Each significant word, term or phrase contained in the ordinance shall be defined,
- Each definition will contain the meaning(s) subscribed to them within the section,
- The preamble to the definition section will specify that context, clearly giving a different meaning, may be considered.

¹ These standards are drawn from a variety of sources including the existing ordinances, rules, by-laws and policy manual of the Palm Beach County Commission on Ethics, *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, May 2004), “Best Practices,” *Local Government Ethics Programs*, (CityEthics.Org., 2013).

Code or Ordinance Establishing Stated Offenses

- Misuse of public office or employment (giving special financial benefit, not shared by those similarly situated, to self or those in privity),
- Corrupt misuse of official position (misuse with specific intent),
- Disclosure (with abstention) of voting conflicts,
- Contractual relationships (doing business with official or employee's government), with stated exceptions,
- Accepting travel expenses from contractor, vendor, service provider, bidder or proposer,
- Prohibiting contingent fees for lobbying, with stated exceptions,
- Requiring honesty in application for positions,
- Prohibiting disclosure or use of certain "inside" information,
- Establishing a gift law:
- Limiting gifts from vendors, lobbyists, or principal or employer of a lobbyist to \$100 aggregate per calendar year,
- Prohibiting any gift for official action taken or which could be taken, a legal duty performed or which could be performed, or a legal duty violated or which could be violated,
- Instituting a reporting requirement for non-prohibited gifts exceeding \$100 from others, with stated exceptions,
- Providing a mechanism for covered persons to solicit on behalf of a non-profit charitable organization by making same transparent through the use of a solicitation log,
- Creating an anti-nepotism law prohibiting appointment, employment, promoting, or advocating for same, of those in privity to the official or employee, with stated exceptions,
- Providing that interference, obstruction, or attempting same, without legal basis, with any investigation constitutes a "stand alone offense,"

Creation of an Independent Ethics Commission

- Establish, by separate ordinance or distinct provision, an independent ethics commission,
- Maintain, in both form and function, complete separation of the agency from those under its jurisdiction,
- Reflect the degree of separation on the governmental organizational chart,
- Establish a fixed annual budget, with certain source, which cannot be decreased or limited by any outside agency,
- Empower only the commission to enforce the ordinance and give advisory opinions,
- Permit independent investigations of matters brought to the attention of the commission staff outside of a formal complaint.

Ethics Commission Structure which Reflects Independence

- Minimum of five commissioners,
- Appointed to staggered terms of a minimum of 3 years, by independent agencies including local bar associations, local police organizations, regional colleges or universities and local professional organizations,

- Require detailed qualifications for commissioners,
- Promote composition by members who are representative of the community in racial, gender and ethnic composition,
- Prohibit political contributions or committee memberships or employment by a covered entity.

Rules or By-Laws Covering Details of Operation

- Provide for holding regular monthly public meetings,
- Detail the election of a Chair, Vice Chair and committees,
- Establish parliamentary rules of procedure (Robert's Rules) for meetings,
- Organize a staff, depending upon budget, including Executive Director, Administrative Staff, Staff Attorney and Investigator.

General and Enforcement Powers of Commission

- Empower the commission, and only the commission, to enforce the code and render advisory opinions,
- Give the commission subpoena powers,
- Upon finding a violation, empower the commission to impose civil penalties including fines,
- Confer the power to recommend to the municipal body that it declare void any contract, grant, subsidy or license procured in violation of the code,
- Have the authority to refer willful violations to the state attorney for criminal prosecution.

Advisory Opinions

- Establish a procedure by rule or ordinance, by which covered persons may obtain an advisory opinion from the commission regarding proposed future conduct,
- Provide that only covered persons may receive an opinion,
- Only allow covered persons, or their direct representative, to submit a request for opinion regarding their own proposed future conduct,
- Establish a standard format for persons to submit in requesting an opinion,
- Require the requestor to submit detailed facts,
- Limit the opinion to the requested facts and circumstances,
- Provide for timely processing and expedited timeframe when necessary,
- Require that each opinion contains the following information:
 - A recitation of the facts;
 - Relevant applicable sections of the ordinance;
 - An opinion as to whether the ordinance applies to the requestor;
 - Application of the ordinance to the suggested future conduct;
 - A conclusion;
 - Additional comments or advice regarding the situation, if appropriate; and
 - Signature of the executive director.
- Require that the commission hear, vote on and approve each opinion,
- Publish opinions for ready reference.

- Recognize that past opinions constitute “a body of law” upon which covered persons may rely and strive to harmonize each one with prior opinions.

Training, Education and Community Outreach

- Provide that all county and municipal entities establish training and retraining policies for all covered persons. Policies should include a specific deadline and grace period for new employees as well as mandatory retraining yearly or biennially;
- Review compliance with the policies,
- Establish a formal training program, with instructional materials and copies of a manual including the text of all applicable ordinances,
- Periodically review and update the training,
- Provide access to training in various formats (stream directly from website, YouTube, DVD and live presentation),
- Utilize surveys or other performance metrics to assess the quality of training,
- Conduct community outreach efforts to educate the public as to the mission and purpose of the commission.

Policy and Procedure Manual

Office Policy and Procedure Manual provides a working knowledge of the organizational structure and internal policies for Ethics Offices and is divided into the following sections.

Office Overview

Provide the function, purpose, physical location, employment positions and department or division assignments.

General Policies

Address office hours, absences and tardiness, lunch and break periods, compensatory time, overtime, flex time, classification and pay administration, dress code, payment of dues, memberships and travel, duplication faxing and printing, emergency procedures, injuries, leave benefits, processing mail, parking, personnel records, telephone decorum, security and supplies.

Intake

Address policies related to processing, reporting and disposition of complaints, advisory opinions, investigations and inquiries.

Appellate Procedures

Provide jurisdictional clarification guidelines regarding appellate counsel, notice of appeal, transmittal of record, engagement of experts, and selection and employment of outside counsel for individuals who may file an appeal regarding a commission ruling.

Communication

Establish communication policies. It is important to maintain open communication with the public, the media, government officials and employees, and other outside parties. The communication section provides detail regarding media relations, press releases, phone calls from outside parties and voice mail.

Professional Development

Provide guidelines for enhancement of professional capabilities of staff by encouraging attendance at seminars, conferences and workshops, through a variety of methods including training and education, continuing legal education, learning programs and employee tuition refund program.

Staff

Address various staff-related topics including new hire orientation, outside employment, employee incentives, political involvement and contributions, internship and fellowship programs, resignations, suspension, demotion, discharge, and anti-harassment and equal employment opportunities policies.

Meetings

Provide a schedule for the regularly monthly meetings and their location, emergency or special meetings, and agenda preparation and publication.

Computer

Establish a computer use policy to place personnel on notice that the agency has made a significant investment in its computer system, including the system in place within the office. It is important to maximize the system's use through training and maintenance.

Provide a procedure for the local area network administration, electronic mail, the timekeeping application and the use of laptop computers and the internet.

Documents

Create a document policy which recognizes that the office produces a large volume of documents on an ongoing basis. Address location of documents, production and document duplication in response to public records requests.

Office Administration

Outline the guidelines for the annual budget preparation, fixed assets, revenue accounts, equipment and computer repair and payroll preparation.

File and Record Management

Address office filing system and operation, public record requests, and other related filing issues.

Website

Address the website, its function and maintenance. The office is transparent by design and shall maintain a website that provides access to information that should be readily available to the general public.

Investigative Standards

Utilize the following guidelines and minimum standards to conduct investigations into any type of allegation.

Investigators

- Persons assigned to conduct ethics investigations must at minimum possess the knowledge, skills and experience required for investigative work.
- All persons assigned to any investigation must be and remain independent and objective while conducting said investigation, and free of personal or other bias which could obstruct the investigation as an objective fact finding process.

Professionalism

While conducting any investigation staff shall act in a professional manner at all times.

Legal Requirements

Investigations should be initiated, conducted, and reported in accordance with all applicable laws, rules and policies, and with respect for the rights and privacy of those involved.

Thoroughness

Investigations should be conducted in a diligent and complete manner, and all reasonable steps taken to gather sufficient relevant evidence to support the investigative findings should be taken.

Timeliness

Investigations should be conducted in a timely manner recognizing the individual complexities.

Objectivity

All evidence must be documented, gathered, and analyzed in an objective and unbiased manner so as to impartially determine its validity in assessing alleged violations.

Evidence and Documentation

- All investigative findings and conclusions should be supported by *sufficient, competent and relevant* evidence and appropriate documentation, which must be gathered using methods and techniques that are appropriate under the available circumstances, and within accepted investigative principles.
- Evidence is *sufficient* if there is adequate evidence to support the investigative findings.
- Evidence is *relevant* if it has a logical and reasonable relationship tending to prove or disprove any matter at issue in the investigation.
- Evidence is *competent* to the point that it is consistent with facts already known or established during the investigation.
- Quality control of all investigations based on proper supervision of investigative actions must be exercised, including periodic and final supervisory review to ensure:
- Evidence gathered and submitted adequately supports the findings of the investigative report(s).
- The investigation was thorough, conducted fairly and objectively, and utilized appropriate and accepted investigative techniques, and followed a logical investigative sequence.
- That coordination with other appropriate personnel or agencies as indicated was successfully completed.

Investigative Reports

- Investigative reports shall present accurate factual information uncovered during the investigation in a fair, objective and unbiased manner.
- Investigative reports shall be accurate, concise, and follow a logical and generally accepted investigative methodology.
- Information within the investigative report shall be relevant to at least one of the matters at issue, including any historical or background information presented.
- Investigative reports shall be timely in both presentation and supervisor review.
- Investigative reports and information uncovered during any ethics investigation shall be exempt from public disclosure as required under §112.3188, Florida Statutes or other relevant public disclosure laws, until such time as the investigation is closed and the information released, so as to guard the privacy of all parties involved.
- Confidentiality of Investigations
- The investigating agency should establish and follow standardized staff procedures for safeguarding names of persons involved and other investigative information, while any investigation is active.

- An investigation (including any preliminary investigation) remains active and the investigative reports are exempt from public disclosure until the completion of the supervisor review process, including all changes recommended or initiated during this process, and until the final report is accepted by the agency director, and copies of the report have been distributed to appropriate parties involved.
- Investigative agencies shall have a procedure regarding individuals qualified as a “whistle-blower” as established under §112.3189, Florida Statutes or other relevant law, and to protect their confidentiality as required by law.

Complaints

- Establish a procedure by rule or ordinance, by which sworn complaints are received and processed,
- Specify the subject matter(s) that the Ethics Commission may consider,
- Allow for deferment of complaint if alleged violation is the subject of an active criminal prosecution,
- Comply with public records exemption unless and until:
 - Confidentiality waived in writing by the respondent; or
 - Commission dismisses complaint; or
 - Preliminary investigation is complete and Commission finds probable cause; or
 - Commission orders a public hearing.
- Provide a timeframe after filing of complaint to render final order disposing of case,
- Establish a procedure to withdrawal of complaints.

Legal Sufficiency Determination

- Establish a process for preliminary determination of legal sufficiency,
- In order to be found legally sufficient, a complaint must be as follows:
 - Be in writing;
 - Allege a violation of an ordinance under the jurisdiction of the commission;
 - Be based substantially upon personal knowledge of the complainant; and
 - Be signed under oath or affirmation by the complainant.
- Establish timeframe to forward copy of complaint and supporting documents to respondent.
- Upon finding of legal sufficiency, assign an advocate to the case.

Preliminary Investigations

Provide procedures for investigations of a legally sufficient complaint to determine if probable cause exists, delegation of subpoena power to executive director, and an investigative report to advocate.

Probable Cause Determination

A hearing held in executive session, unless otherwise requested by the respondent, in front of the commissioners. The meeting shall provide the following:

- Written recommendation from advocate for the disposition of complaint,
- Establish the right of respondent to be represented by attorney at probable cause hearing.
- A timeframe to provide notice to respondent to file a response,
- A timeframe to provide notice of probable cause hearing and right to attend,
- Establish the scope of the probable cause determination, which is limited to:
 - Investigator's report;
 - Recommendation of advocate; and
 - Oral statement by advocate and respondent or respondent's attorney
- Publication of probable cause determination by Commission,
- Notify complainant and respondent in writing of disposition,
- Establish timeframe to hold the public hearing,
- Create a process for stipulated resolution of the complaint, upon approval by the commission, prior to final hearing.

Public Hearing

- Provide options for a hearing before the full commission, a designated panel of the commissioners, or a hearing officer
- Give the right to discover of all evidence which will be presented utilizing all available methods available under the laws and rules governing civil cases in the jurisdiction,
- Establish timeframe to provide reasonable notice and opportunity to prepare a defense,
- Right of respondent to be represented by attorney at public hearing,
- Establish timeframe to disclose witness lists,
- Establish guidelines for motions,
- Allow the commission and the respondent to enter into settlement agreement at any stage of the proceedings,
- Establish procedure to present case, which includes the right to:
 - Make opening and closing statements,
 - Present evidence, and
 - Cross-examine witnesses
- Establish a procedure to record the public hearing,
- Entry of written final order with finds of fact and conclusions of law

Appeals

Provide right to appeal any finding of violation to a court of competent jurisdiction

**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*.

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 2.3 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. ~~2009-051~~2010-019)
2. COMMISSION ON ETHICS, ARTICLE V SECTION 2-254 to 2-260 (Ordinance no. ~~2009-050~~2010-019)
3. LOBBYIST REGISTRATION, ARTICLE VIII SECTION 2-351 to 2-357 (Ordinance nos. ~~2003-018/2005-055~~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.

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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.

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- 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.

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) and the Chairperson or Vice Chairperson of the COE.
- c) The Executive Director and Chairperson or Vice Chairperson of the COE will then determine whether to submit the advisory opinion to the COE for review at the next regularly scheduled meeting.
- d) The Executive Director may, at his/her discretion, submit a draft advisory opinion or, in the alternative, the initial request for advisory opinion directly to the COE for advice and guidance.
- e) All requests for advisory opinion will be processed within a reasonable time and, unless otherwise processed as per subsection c above and/or paragraph 2.7 below, the written response is to be submitted to the COE for approval at the next regular meeting.

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 Response by the Executive Director

The Executive Director, or his designee, may respond to a request for advisory opinion without conferring with the COE 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.

2.8 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.

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2.9 Publication of Advisory Opinions

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

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. ~~2009-051~~2010-019)
 2. COMMISSION ON ETHICS, ARTICLE V SECTION 2-254 to 2-260 (Ordinance no. ~~2009-050~~2010-019)
 3. LOBBYIST REGISTRATION, ARTICLE VIII SECTION 2-351 to 2-357 (Ordinance nos. ~~2003-018/2005-055~~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.

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.

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 **C** and **D** as contained herein.

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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.

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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.

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.

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.

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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.

4.7 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.

5.41 **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.

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.

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.

Comment [ga19]: Lenny suggested changing this language.

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 may 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.

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.~~

Comment [ga10]: Lenny thinks this should be stricken.

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

Comment [gal11]: Lenny suggested looking at this language.

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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.

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.

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.

Comment [gal12]: Lenny suggested reviewing this.
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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.

Comment [gal13]: Lenny suggested advisory opinions are not appealable.

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

Comment [gal14]: Lenny suggested reviewing the entire section.

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.

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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

Comment [gal15]: ?

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**

Comment [gal16]: This section should be in accordance with county policy.

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.

Comment [gal17]: Should be using county policy

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.

**PALM BEACH COUNTY COMMISSION ON ETHICS
BY-LAWS**

ARTICLE I – IDENTIFICATION

Section 1- Name



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By-Laws
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ARTICLE I – IDENTIFICATION

Section 1: Name

The Palm Beach County Commission on Ethics (hereinafter “the Commission”).

Section 2: ~~Offices~~Location

~~2633 Vista Parkway~~

Commission offices are located in The Historic 1916 Palm Beach County Courthouse located at 300 N. Dixie Highway, Suite 450, West Palm Beach, FL ~~33411~~ 33401 or such address where the Commission may be located from time to time.

ARTICLE II – MISSION STATEMENT

Section 1: Mission

The mission of the Commission ~~on Ethics~~ is to ensure the integrity of the governmental decision-making process, restore public confidence in government and to serve as the guardian of the public trust.

Section 2: Strategy

In order to accomplish the mission, the ~~Palm Beach County~~ Commission ~~on Ethics~~ shall:

- A. Educate the public, elected and appointed officials and public employees, lobbyists, and vendors doing business with the county of exiting standards of ethical conduct.
- B. Actively enforce the standards of conduct that apply to elected and appointed officials and public servants, lobbyists and former public employees.
- C. Review ordinances under the Commission’s jurisdiction and applicable state and federal statutes related to ethics in government to recommend changes that will lead to greater ethics compliance.
- D. Serve as a model for elected and appointed officials and government employees and work to create an atmosphere conducive to ethical conduct and behavior for both the public and private sectors within Palm Beach County.

ARTICLE III – COMMISSION

~~ON ETHICS~~

Section 1: Number, Appointing Authority and Qualifications

The Commission ~~on Ethics~~ shall consist of five (5) members — who are appointed as follows:

- A. The President of the Palm Beach County Association of Chiefs of Police shall appoint a former law enforcement official with experience in investigating white collar crime or public corruption.

- B. The President of the Hispanic Bar Association of Palm Beach County, the President of the F. Malcolm Cunningham, Sr. Bar Association, and the President of the Palm Beach County Bar Association shall appoint an attorney with experience in ethics regulation of public officials and employees.
- C. The President of Florida Atlantic University (FAU) shall appoint a faculty member who teaches at an institution of higher education with a campus located in Palm Beach County and who has taught a course in professional legal ethics or has published or performed services in the field of professional legal ethics.
- D. The President of the Palm Beach Chapter of the Florida Institute of CPAs shall appoint a member who possesses at least five (5) years experience as a Certified Public Accountant (CPA) with forensic audit experience.
- E. The Board of Directors of the Palm Beach County League of Cities, Inc. shall appoint a person who has served as a former elected official for a governmental entity in Palm Beach County.

Section 2: Term of Appointment and Taking Office

The members of the ~~Ethics~~ Commission shall serve staggered terms of four (4) years each; ~~provided that of the original members, the two (2) members appointed by the Palm Beach County Association of Chiefs of Police and, The Presidents of the Hispanic, F. Malcolm Cunningham, Jr. and Palm Beach County Bar Associations shall be~~ term of Commissioners appointed to a term of two years and the remaining three (3) members office shall commence immediately after being sworn into office. A swearing-in ceremony for newly appointed commissioners will be conducted by the Chief Judge of the 15th Judicial Circuit or a designee and coordinated by the Executive Director. The Executive Director shall be appointed for a initial term of four (4) years. Thereafter, provide an orientation program for all members shall serve terms of four (4) years. new Commissioners.

Section 3: Conditions of Appointment

In addition to the requirement that each member take the prescribed oath of office pursuant to section 876.05, Florida Statutes, during their tenure members of the Commission may not hold or campaign for any elective political office, hold office in any political party or political committee, actively participate in or contribute to any political action committee or to any campaign for state or local office or for any U.S. Congressional or Senate office serving the State of Florida, be employed by Palm Beach County, any municipality within Palm Beach County or any other governmental entity subject to the authority of the Commission ~~on Ethics~~ or the Inspector General, or allow his or her name to be used by a campaign in support of or against any candidate for political office or any referendum or other ballot question.

Section 4: Vacancy and Removals

A vacancy occurring during or at the expiration of a member's terms on the Commission ~~on Ethics~~ shall be filled as provided in Article V., Section 2-255 of the Commission on Ethics ordinance, ~~Article V. Section 2-255~~ no later than sixty (60) days after the vacancy occurs. A newly appointed member shall serve out the remainder of his or her predecessor's term.

Section 5: Compensation

~~Ethics~~ Commissioners shall serve without compensation but shall be entitled to reimbursement for necessary expenses incurred in the discharge of their duties.

Section 6: Function

The ~~Ethics~~ Commission shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Palm Beach County Code of Ethics, Lobbyist Registration and Post-~~E~~mployment Ordinances or similar ordinances, rules or regulations duly adopted by Palm Beach County.

Section 7: Duties and Responsibilities

The ~~Ethics~~ Commission shall have the following duties and responsibilities:

- A. Issue advisory opinions regarding county ordinances within the jurisdiction of the Commission as requested by elected and appointed officials and other public servants.
- B. Make legal sufficiency and probable cause determinations, approve settlement agreements and issue public reports and final orders regarding disposition of complaints and impose penalties.
- C. Develop educational programs and materials and engage in community outreach to inform and educate county and municipal officials and employees, county vendors, non-~~profit~~ corporations and other entities that do business with the county as well as the public at large about county ethics ordinances and the importance of ethics to the public's confidence in county and municipal government.
- D. Review ordinances and state and federal laws relating to ethics in government and report and make recommendations to the Board of County Commissioners as it deems appropriate.

Section 8: Grants, Contributions or Appropriations

The Commission ~~on Ethics~~, through the Executive Director, may actively pursue and accept grants, contributions or appropriations from the federal government, state government, any municipality within Palm Beach County, or any academic institution or nonprofit entity which has not entered into a contract or transacted business with the County, or if having entered into such contract or business transaction with the County, by a Board of County Commission resolution of approval of such grant, contribution or appropriation by the academic institution or nonprofit entity.

Section 9: Procedures Upon Removal

Upon notification to the appointing body, The Commission ~~on Ethics~~ may remove a Commissioner for good cause upon a supermajority vote of the remaining Commissioners. Good cause includes, but is not limited to the following:

- A. A conviction of a crime of moral turpitude or a felony crime.

- B. A finding of a violation of the Palm Beach County Code of Ethics.
- C. A failure to meet conditions of appointment as contained in Article III, Section 3 of ~~the Commission on Ethics By Law~~this document.

ARTICLE IV - OFFICES AND DUTIES

Section 1: Officers

The officers of the Commission ~~on Ethics~~ are a Chairperson and a Vice ~~Chairperson~~.

Section 2: Selection

The Chair and Vice Chair shall be elected from and by the members of the Commission at the first Commission meeting following the appointment and swearing in of the newly appointed Commissioners, which is every two years. The election process shall be as follows:

- A. The Executive Director, in the case of the Chair's election, and the Chair, in the case of the Vice Chair's election, calls for nominations.
- B. Nominations are made and received. A member may nominate himself or herself. No second is required.
- C. The Executive Director/Chair asks if there are any further nominations. If none, the Executive Director/Chair declares that nominations are closed. No motion to close nominations is required.
- D. The Executive Director/Chair calls for a vote.
- E. The nominee who receives a majority of the votes is elected.

Section 3: Term of Office

The term of each office is two years unless a vacancy occurs. No officer shall be permitted to serve two (2) consecutive terms in their respective offices. The Commission may remove the individual from the position of Chair by majority vote. In the event the Chair relinquishes his/her office, the Vice Chair shall be automatically appointed Chair for the remainder of the term. In the event the office of Vice Chair becomes vacant, the Commission shall elect a new Vice Chair to serve until the term expires.

Section 34: Chairperson

The Chairperson shall preside at all meetings of the Commission.

Section 45: Vice -Chairperson

In the absence or disability of the Chairperson, the Vice ~~Chairperson~~ shall perform the duties of Chairperson.

Section 6: Signature by Chairperson

Documents requiring signature by the Chair will be delivered by Commission staff, signed immediately and scanned for posting to the website. Documents requiring filing and official Minutes will be forwarded to the Minutes Department of the Clerk of Courts for filing. If the Chair is not available for signature, the Vice Chair shall execute the documents. If the Chair and

Vice Chair are not available, and there is a need to obtain an immediate signature, any Commissioner may sign the document.

ARTICLE V- ~~COMMISSION STAFF~~

Section 1: Executive Director

The Executive Director is appointed by and serves at the pleasure of the ~~Ethics~~ Commission. The Executive Director is the chief executive of the department and shall be a member of the Florida Bar.

Section 2: ~~Counsel to the Commission on Ethics~~

~~The Counsel to the Commission on Ethics is appointed by and serves at the pleasure of the Ethics Commission. Counsel shall be a member of the Florida Bar and may serve on a volunteer basis.~~

~~Section 3: Advocate~~

The Advocate is appointed by and serves at the pleasure of the ~~Ethics~~ Commission. The advocate shall prosecute cases before the ~~Ethics~~ Commission. The Executive Director may serve as Advocate. The Advocate may serve on a volunteer basis.

Section 43: Other Employees

The Executive Director shall have the authority to appoint, remove and suspend employees or agents of the Commission ~~on Ethics~~ within the constraints set forth by the Commission's budget. The Executive Director shall be further empowered to adopt personnel and management policies consistent with like policies in place for County personnel.

ARTICLE VI- ~~COMMITTEES~~

Section 1: Committee Chairs

The ~~Ethics~~ Commission may appoint committee chairs to perform specific tasks or functions.

Section 2: Personnel Committee

The Commission ~~on Ethics shall~~ may establish a personnel committee to review personnel policies, hear formal employee grievances and complaints, and perform other personnel related functions as determined by the Commission.

Section 3: Education and Public Outreach

The ~~Ethics~~ Commission ~~shall~~ may establish an education and public outreach committee to assist the Executive Director and the staff in developing policies related to the Commission's education and public outreach functions.

Section 4: Other Ad Hoc Committees

The Chairperson and/or the Commission ~~on Ethics~~ may establish other committees to perform certain tasks as deemed necessary.

ARTICLE VIII- MEETINGS

Section 1: ~~Agenda~~ Governing Rules.

~~The Executive Director, in collaboration with the Chairperson, or Vice Chairperson shall establish the agenda for regular and special meetings. All action items for a Commission on Ethics agenda, including requests for opinions and motions regarding complaints, must be received at least five (5) days prior to the meeting to be placed on the agenda.~~

~~Section 2: Quorum~~

~~At all meetings of the full Commission, the presence of a majority of three members shall constitute a quorum for all purposes. The act of the majority of the members of the Commission shall be the act of the full membership.~~

~~Section 3: It is the policy of the Commission that these rules shall govern all official meetings of the Commission. The purpose of these rules is to provide for the efficient and orderly functioning of the business of the Commission; to protect the rights of each individual; to protect the right of the majority to decide; to protect the right of the minority to be heard; and to preserve the spirit of harmony within the Commission and those appearing before the Commission. No other rules shall apply. The ultimate determination of procedural matters shall rest with the Chair, subject to appeal as set forth in Section 4C. below.~~

Section 2: Meetings.

A. Meetings Open to the Public

All meetings of the Commission shall be open to the public in accordance with Florida's Government-in-the-Sunshine Law, Section 286.011, Florida Statutes, with the exception of those meetings statutorily exempt such as meetings held in executive session, pursuant to the Commission Rules of Procedure.

B. Schedule

A meeting schedule will be distributed prior to each calendar year listing the dates of all anticipated meetings of the Commission. Meetings set to be conducted the day after a legal holiday may be rescheduled. Meetings may be postponed or canceled by a motion approved at any Commission meeting by a majority of the members present.

C. Accessibility/Seating Capacity

All meetings will be conducted in a building that is open and accessible to the public. Due to the need to comply with the fire code, there may be occasions when entrance by the public to the Board of County Commission Chambers or other meeting room is limited. To the extent possible, alternative seating arrangements may be made.

D. Regular Meetings

Unless otherwise advertised, regular meetings of the Commission typically will commence on the first Thursday of each month at 1:30 p.m. with the exception of December and on holiday conflicts. In December, the meeting will be held on the second Thursday of the month. Generally, all meetings will take place in the Governmental Center, 301 North Olive Avenue, West Palm Beach, Florida in the Board of County Commission Chambers. Meeting date, time, and location may be changed by the Commission.

E. Workshops

Workshops may be held to discuss items of special importance or complexity that require longer than usual staff presentation and Commission questions.

F. Special Meetings

A special meeting of the Commission may be called by a majority of the members. Commission staff shall notify each member of the Commission via email or verbally of the date, time, and place of the meeting and the purpose for which it is called, and no other business shall be transacted. At least 24 hours shall elapse between the time Commission staff receives notice of the meeting and the time the meeting is to be held. If after reasonable diligence it was not possible to give notice to each Commissioner or to allow 24 hours to elapse between the time Commission staff receives notice of the meeting and the time the meeting is held, such failure shall not affect the legality of the meeting if a quorum is in attendance. Reasonable public notice of the special meeting sufficient to comply with Section 286.011, Florida Statutes, shall be given. If a determination to hold a special meeting is reflected in the record of any Commission meeting, no additional notice is required.

G. Emergency Meetings

An emergency meeting of the Commission may be called by the Executive Director or the Chair whenever in his/her opinion an emergency exists which requires immediate action by the Commission. Whenever an emergency meeting is called, Commission staff shall notify each member of the Commission via email or verbally of the date, time and place of the meeting and the purpose for which it is called, and no other business shall be transacted. At least 24 hours shall elapse between the time Commission staff receives notice of the meeting and the time the meeting is to be held. If because of the nature of the emergency it is not possible to give notice to each Commissioner or it is impossible to allow 24 hours to elapse between the time Commission staff receives notice of the meeting and the time the meeting is held, such failure shall not affect the legality of the meeting if a quorum is in attendance. Reasonable public notice of any emergency meeting sufficient to comply with Section 286.011, Florida Statutes, shall be given.

H. Public Hearings

Public hearings shall be held as prescribed by law. Public hearings will commence at or as soon as possible after the advertised time. In no event will public hearings

commence prior to the advertised time. Public hearings may be continued from a prior meeting, or scheduled at times and on days or evenings in lieu of or in addition to the first Thursday of the month. Proof of Publication of the notices for public hearings shall be on file with the Minutes Department of the Clerk of Courts for inspection. The Commission does not have to take formal action to receive and file same.

I. Presentation Format

As a general rule, the order of item presentation during most meetings of the Commission shall be as follows, subject to change depending on the item under consideration:

1. Chair announces item
2. Staff gives presentation, if any
3. Commission may ask questions of staff
4. Public comment, if any
5. Public comment is closed
6. Commission discussion and amendments, if any
7. Motion made
8. Vote taken

I. Minutes

A representative of the Clerk of Courts shall take accurate minutes of the proceedings of every meeting of the Commission, with the exception of executive sessions where no minutes are to be taken, but where the proceedings shall be audio recorded. Unless a reading of the minutes of a meeting is requested by a majority of the Commission, such minutes, when approved by the Commission and signed by the Chair, shall be considered approved without reading; provided that the Clerk delivered a copy thereof to Commission staff, who made such minutes available to each member of the Board at least two full business days preceding the meeting. The minutes of prior meetings may be approved by a majority of the members present, and upon such approval, shall become the official minutes.

Section 3: Order of Business

A. Official Agenda

There shall be an official agenda for every meeting of the Commission, which shall set forth the order of business to be conducted at the meeting. The agenda format for a typical Regular* Commission meeting shall be substantially as follows:

- I. Call to Order
- II. Roll Call
- III. Introductory remarks
- IV. Approval of previous meeting minutes
- V. Processed advisory opinions (consent agenda)
- VI. Items pulled from consent agenda

- VII. Proposed advisory opinions
- VIII. Special Presentations or executive sessions (if applicable)
- IX. Executive Director comments
- X. Commission comments
- XI. Public comments
- XII. Adjournment

*Workshop and other meeting agendas shall be prepared by Commission staff in an appropriate format.

B. Preparation/Delivery of Agenda

Commission staff shall prepare the agenda and make every effort to deliver a complete agenda packet to the Commissioners no later than the Friday prior to the regular meeting. Agenda kits for special and emergency meetings will be distributed in as timely a manner as possible. The agenda, as well as lengthy reports and other documents that are part of the agenda's back-up documentation, shall be posted to the Commission's website.

C. Quorum

A majority of the full Commission shall constitute a quorum. The appearance of a Commissioner by telephone does not count toward establishing a quorum. If no quorum exists within thirty (30) minutes after the time designated for the meeting of the Board to commence or if a quorum is lost, the Chair or the Vice Chair or, in their absence, the Commissioner with the most seniority, shall adjourn the meeting. The names of the members present and the time of adjournment shall be recorded in the minutes by the Clerk of Courts representative. The members present may, during the 30-minute period, open the floor for "public comment" or any similar presentation so long as no official action is taken or direction to staff is given.

D. Call to Order

If a quorum exists, the Chair shall call the meeting to order. In the absence of the Chair, the Vice Chair shall call the meeting to order. If both are absent, the Executive Director shall call for the election of a temporary chair. Upon arrival of the Chair or the Vice Chair, the temporary Chair shall relinquish the gavel upon conclusion of the business immediately before the Commission at that time. Before proceeding with the business of the Commission, the Clerk of Courts representative shall call the roll of the members in alphabetical order, and the names of those members present and absent shall be recorded in the minutes.

E. Agenda Approval

Only items listed on the official agenda will be acted upon unless additional items are authorized by a majority of the Commission.

F. Consent Agenda

Consent Agenda items are typically routine in nature, noncontroversial, and do not deviate from past Commission direction or policy. They usually do not require Commission comment and are voted on as a group. Any item may be pulled by a Commissioner for discussion. Members of the public may speak to any consent item in accordance with Section 6, Paragraph I. below.

G. Regular Agenda

Items appearing on the Regular Agenda require Commission direction, a policy decision, or are otherwise of great significance necessitating separate attention and action. "Add-on" items, described in the following paragraph H, also appear on this agenda. Items will be addressed individually in the order presented on the Agenda, unless reordered upon approval by a majority of the Commission.

H. "Add-on" Agenda Items

In the event of an unforeseen or emergency situation (an item may be added to the Regular Agenda upon approval of the Executive Director, bypassing the normal submittal and review process. The Commission should be given notice of any "add-on" as soon as possible prior to the scheduled Commission meeting.

I. Executive Director Comments

The purpose of Executive Director Comments is to keep the Commission and the public informed as to areas of interest and community involvement with staff on a recurring basis.

J. Commissioner Comments

The purpose of Commissioner Comments is to promote the public discussion of matters relating to Commission business and to encourage the dissemination of information. Any Commissioner may submit reports and information on items relating to Commission business. When possible, the other Commissioners, the Executive Director, and Commission staff should receive such materials in advance. Commissioners may also request the preparation of certificates of appreciation and commendation, reports, and other actions of the Commission during this portion of the agenda, subject to majority consensus. All such requests shall be referred to the Executive Director or staff, as appropriate. Official actions may be taken under comments in the case of an emergency or for other situations necessitating immediate action as may be determined by a majority of the Commission.

K. Public Comment

Members of the public may address the Commission during the discussion of a specific addenda item after submitting a comment card or during the Public Comment section at the close of the meeting. Procedures for addressing the Commission are set forth in Section 6 below.

Section 4: Rules of Debate

This section sets forth the rules of debate to maintain decorum, the various motions available for use by the Commission, and related matters.

A. Decorum

A motion must be accepted by the Chair before it is officially on the floor. A motion must be made, seconded, and stated by the Chair before the merits can be debated. Every member of the Commission has a right to speak in the debate and shall always be recognized by the Chair. Non-member recognition shall be at the Chair's discretion. The member who made the motion shall be entitled to speak first. A member shall be deemed to have yielded the floor when she/he has finished speaking. The discussion is to be related to the motion on the floor. All questions are to be directed through the Chair.

B. The Chairperson or Presiding Member

Upon passing the gavel, the Chairperson or other presiding member of the Commission may move or second a motion.

C. Point of Order

Any member who believes that a breach of the rules has occurred has a right to call immediate attention to the matter by raising a "point of order." A point of order

1. may interrupt a speaker who has the floor;
2. does not need to be seconded;
3. is not debatable; and
4. is decided by the Chair.

A decision of the Chair on a point of order may be appealed to the Commission by motion and second; and without debate, the Chair shall submit the question to the Commission, "Shall the decision of the Chair be sustained?" and the Commission shall decide by a majority vote.

D. Motion to Reconsider

An action of the Commission may be reconsidered at the same meeting or the very next regular Commission meeting. A motion to reconsider can only be made by a member who voted on the prevailing side of the question, and is debatable. Such motion shall not be entertained:

1. if the approved action has been partially or fully carried out;
2. if action has been taken after a required public hearing; or
3. if the vote has caused something to be done that is impossible to undo.

Adoption of a motion to reconsider shall rescind the original action; therefore a new motion, second, and vote is required to take formal action on the item, if desired, and may take place at a future meeting. If a motion to reconsider is not brought forward in a

timely manner, yet a Commissioner would like to revisit the issue, the item may be placed on a future agenda with the following provisions:

1. new information has been discovered that if known at the time of the original vote, the outcome may have been different;
2. a majority of the Commission approves; and
3. none of the instances set forth above that would prohibit a motion to reconsider exist.

E. Substitute Motion

A member may make a substitute motion if he/she is not in agreement with the motion on the floor. This motion is debatable. No more than three motions shall be on the floor at any given time.

F. Motion to Postpone

If a member would like to defer consideration of a matter, a motion to postpone is in order, which may include a time and date to continue the discussion. When postponing an advertised public hearing, a time and date certain must be included in the motion. This motion is debatable.

G. Motion to Close Debate/Call the Question

Any Commissioner may move to close debate/call the question on the motion being considered. This motion is not debatable and requires a two-thirds vote of the members. If the motion passes, all discussion ends and a vote is taken on the motion on the floor.

H. Adjournment

No motion is required to end the meeting. The Chair declares the meeting adjourned without objection.

Section 5: Voting

A. Motions

Motions require a majority vote of those members present for passage. If a supermajority vote is required, the motion must receive an affirmative vote of a majority of those present and voting, plus one, unless otherwise required by special or general law. Final action on a pending motion may be postponed in accordance with Section 4, Paragraph F. above.

B. Method

The vote may be by voice, show of hands, or roll call as decided by the Chair. The maker and seconder of the motion need not be present in Chambers when the vote is taken. The Chair shall call for the vote and announce the results, which will be recorded by the minutes Clerk. Every member who is in the Commission Chambers must vote, unless the member has publicly stated that he/she is abstaining from voting due to a conflict of

interest pursuant to Sections 112.3143 or 286.012, Florida Statutes. (See "C. Voting Conflict") A Commissioner's silence will be counted as an "aye" vote.

C. Voting Conflict

No Commissioner shall vote on a matter when the Commissioner has a voting conflict pursuant to Sections 112.3143 or 286.011, Florida Statutes, or under Section 2-443(a) (1-7), *Misuse of public office or employment*, or as defined in Section 2-443(c), *Disclosure of voting conflicts*, Palm Beach County Code of Ethics. Further, in accordance with the Palm Beach County Code of Ethics, any Commissioner with a conflict shall not participate in the discussion of the item. The abstaining member shall comply with the requirements of the referenced state law as applicable, including the filing of Form 8B "Memorandum of Voting Conflict" with the Clerk of Courts within ten (10) days of the meeting at which the conflict was declared. A copy of Form 8B shall also be filed with Commission staff.

D. Vote Change

Any Commissioner may change his/her vote before the next item is called for consideration.

E. Tie Vote

A tie vote shall result in the failure of the motion; however, there is no prevailing side for the purposes of a Motion to Reconsider. Any member of the Commission may, at the next regular meeting and with approval by a majority of the Commission, request that the item be placed on a future agenda for consideration.

Section 6: Public Participation

A. Citizen Input

The Commission recognizes the important right of all citizens to express their opinions on the operation of the Commission and encourages citizen participation in this process. The Commission also recognizes the necessity for conducting orderly and efficient meetings so that Commission business may be completed efficiently, effectively, and timely. Members of the public wishing to speak at Commission meetings shall comply with the procedures set forth below.

B. Accessibility

All persons with disabilities shall be provided reasonable assistance to enable them to effectively participate in Commission meetings.

C. Comment Cards

Any member of the public wishing to speak before the Commission or who wants to make their position known but does not want to address the Commission shall complete a "comment card" and present the card to Commission staff at the meeting for forwarding to the Chair. Only those individuals who have submitted comment cards and who have been recognized by the Chair may address the Commission. Any member of

the public who has filled out a card must be present when the Chair announces the person's name if they desire to be recognized. If an individual does not wish to speak and instead submits a card with his/her comment noted, it is within the Chair's discretion to read the comment into the record. If the Chair does not read the comment, the comment card is nonetheless submitted as part of the official record. In any event, a comment card will not be read into the record if the citizen submitting same is not present when the item is being discussed. As a general practice, comment cards will not be accepted after presentation of an agenda item has begun; however, the Chair has the discretion to accept additional comment cards. Comment cards are considered public records and are to be submitted to the Minutes Clerk before or immediately after the meeting adjourns.

D. Civility

All public comments and any multimedia shown or material distributed shall avoid personal attacks, abusive language, and redundancy. The Chair may curtail repetitious comments. No person attending a Commission meeting is to harass or otherwise disturb any other person in the room. Any person making impertinent or slanderous remarks or whose behavior is disruptive shall be subject to removal from the Commission meeting by County security/Sheriff deputy, or such other action as may be appropriate, and barred from making any additional comments during the meeting by the Chair, unless permission to continue or again address the Commission is granted by a majority vote of the Commission members present.

E. Relevancy

Comments shall be limited to the subject being considered by the Commission and, if there is a motion on the floor, shall be limited to the motion. Comments during "Public Comments" should be directed to Commission issues. Comments on any matter appearing on the agenda the same day are to be made at the time the item is considered under the Consent or Regular Agenda and not under "Public Comments" portion at the end of the meeting.

F. Manner

Each person addressing the Commission shall step up to the podium and give his/her name and address for the record. No person other than a member of the Commission and the person having the floor shall be permitted to enter into any discussion without the permission of the Chair. All remarks shall be addressed to the Commission as a body and not to any individual member or the audience. Commissioners may ask questions of the speaker after his/her uninterrupted comments have been made. No question shall be directed to a Commissioner or staff except through the Chair. No persons other than members of the Commission, Commission staff, individuals participating in an agenda item presentation at the staff table, or persons authorized by the Chair, are allowed beyond the podiums.

G. Allotted Time

Each member of the public shall be granted three minutes to speak. The Chair may extend the maximum speaking time. Allowing the use of a speaker’s time by another individual is within the Chair’s discretion. In the event more than twenty (20) people indicate their desire to speak on the same or a related subject, the Chair may establish a maximum time limit, not to exceed one hour, for public comments. The Chair may also assign time limits for proponents and opponents to address an item. In any event, the Chair shall have the discretion to adjust speaking time limits as he/she deems appropriate.

H. Lobbyists

Any person defined as a “lobbyist” under the County’s Lobbyist Registration Ordinance shall register before addressing the Commission unless an exception set forth in the ordinance applies.

I. Consent Agenda

Prior to Commission approval of the Consent Agenda, public comment will be accepted. One comment card identifying all items of interest shall be submitted to Commission staff, who will pass it on to the Chair. If more than one item is identified, the three-minute allotment may be extended at the Chair’s discretion.

J. Dissemination of Information/Use of Multimedia

Any member of the public desiring to submit information to the Commission relevant to the item may do so only when they are at the podium and recognized to speak. No motion to receive and file any submission by the public is necessary to make same a part of the record; the Chair may “accept without objection” providing there is none. Due to time constraints, there shall be no expectation that the Commission will read any information submitted at a Commission meeting. Early submission of information relevant to an item appearing for Commission consideration is encouraged. The public is authorized to use multimedia supportive of their comments. Multimedia is to be submitted to Commission staff five (5) working days prior to the Commission meeting.

K. Employees

Employees of the County or any municipality within the County have every right as any other member of the public to address the Commission. However, comments pertaining to an active grievance, arbitration, or other personnel dispute are not appropriate for this forum.

Section 8: General Provisions

A. Commissioner Attendance by Electronic Means Telephone

A member may attend a meeting by electronic means such as a speakerphone or videoconference as long as a quorum is physically present at the meeting.

Section 4: Public Input

All interested persons shall be allowed to express their views (oral and/or written) at Commission meetings regarding matters within the jurisdiction of the Commission.

Comment [BCC1]: The modified BCC Rules for meetings address this. This section may be deleted. SC

Comment [gal2]: Lenny suggested reviewing the county rules of procedure

Comment [BCC3]: The modified BCC Rules for meetings address this. This section may be deleted

Comment [gal4]: Lenny suggested Sections 4 and 10 are duplicative

Section 5: Meeting Minutes

~~Minutes shall be taken at every regular and special Commission meeting and shall be approved by a majority vote of the Commission. All meetings of the Ethics Commission shall be public and written minutes of the proceedings thereof shall be available to the public upon request.~~

Section 6: Regular Meetings

~~The Ethics Commission shall hold regular monthly meetings.~~

Section 7: Notice of Meetings

~~Notices of all regular and special Commission meetings shall be posted on the Palm Beach County Meeting Calendar. Agendas and attachments shall be hand delivered, e mailed or faxed to each Ethics Commissioner at least 24 hours before the meeting. Notice of regular meetings shall be posted at least 72 hours before the meeting. Notices of special meetings shall be posted at least 24 hours before the meeting.~~

Section 8: Closed Sessions

~~The Ethics Commission may hold closed sessions at regular meetings for purposes of confidential discussion related to preliminary investigations, legal sufficiency and probable cause determinations.~~

Section 9: Special Meetings

~~Special meetings may be called to address specific matters pursuant to public notice requirements. Reasonable notice for the purposes of a special meeting is presumed to be 24 hours.~~

Section 10: Public Comment

~~Public comment is permitted on all agenda items with the exception of probable cause proceedings and the adjudicatory portion of final hearings involving complaints before the commission. The chairperson may establish and enforce rules pertaining to the orderly conduct of public comment, including time, manner and decorum. There may be times when a Commissioner is physically unable to attend a Commission meeting. So long as there are a sufficient number of commissioners physically present to form a quorum at a meeting, the absent Commissioner may participate by telephone conference or other interactive electronic technology. The absent Commissioner does not count towards a quorum. In instances in which the physically absent Commissioner participates in a meeting, the Commissioner shall be allowed to cast his/her vote.~~

B. Commission Member Representation at Other Meetings

~~The Executive Director or his/her designee will represent the Commission at meetings, conferences or other occasions involving other governmental entities, agencies, officials or groups, or nongovernmental organizations, departments, agencies or officials, and report back to the Commission anything of significance. The Executive Director or his/her designee shall have no power to act for or on behalf of the Commission, unless previously authorized to do so.~~

C. Amendment, Suspension, and Construction of Rules

~~Any amendment of these rules shall be in accordance with the Commission Ordinance, Rules of Procedure, By Laws and the Code of Ethics. The Commission may temporarily suspend any rule during a meeting with an affirmative vote of a majority of the Commission. These rules are for the efficient and orderly conduct of Commission~~

Comment [BCC5]: The modified BCC Rules for meetings address this. This section may be deleted. SC

Comment [gal6]: Lenny suggested reviewing this section.

Comment [BCC7]: The modified BCC Rules for meetings address this. This section may be deleted. SC

business only; no violation of such rules shall invalidate any action of the Commission when approved by a majority vote.

D. Effective Date

These rules shall go into effect on _____, and shall supersede all other rules previously adopted by the Commission.

ARTICLE IX - VOTING

Section 1: Voting and Abstention

Each member at a ~~Ethics~~ Commission meeting shall vote on all matters put to a vote, unless that member is excused from voting or unless that member may have a conflict of interest regarding the item.

Section 2: Recusal

A member of the Commission may recuse himself or herself from voting on a matter if the member has a conflict of interest. If the member abstains from voting, the member must state the reason for the recusal on the record, complete a State of Florida Form 8B, Memorandum of Voting Conflict, and file the form with the Minutes Clerk and the Commission.

Section 3: Disqualification

A member of the Commission ~~on Ethics~~ may be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final hearing for bias, prejudice or interest. Disqualification may be raised by the Respondent, The Advocate or any member of the Commission.

Section 4: Voting by Proxy

A member may not vote by proxy.

~~ARTICLE X - PARLIAMENTARY PROCEDURE~~

~~Section 1: Robert's Rules of Order~~

~~Except where the Code or other rules provide to the contrary, or in the case of emergency, meetings shall be governed by Robert's Rules of Order.~~

ARTICLE XI - BYLAW AMENDMENTS

Section 1: Bylaws

These bylaws shall be reviewed as necessary. They may be amended at any regular meeting of the Commission by a majority vote of those present, provided such proposed amendments are circulated in writing to all Commissioners at least ten days prior to such meeting and ten days public notice shall be posted.

Comment [BCC8]: This Ssection may be deleted.
SC

Comment [gal9]: Lenny suggested reviewing the BCC rules and noted that Robert's Rules of Order should not apply to hearings.

Revised ~~May, 2014~~: October, 2014

Sec. 2-260.1. Public hearing procedures.

(a) Right to public hearing. 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 who is not a member of the Commission.

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- (b) *Presentation of the case.* The advocate shall present his or her case first. Respondent may then present his or her case. Rebuttal evidence may be permitted in the discretion of the commission on ethics.
- (c) *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.
- (d) *Evidence.*
 - (1) Stipulations may be received and are encouraged as to uncontested matters.
 - (2) Oral evidence shall be taken only on oath or affirmation.
 - (3) The respondent and the advocate shall have the right: to present evidence relevant to the issue; to cross-examine opposing witnesses on any matter relevant to the issue; and to impeach any witness regardless who first called him or her to testify.
 - (4) 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 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 on ethics 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 a person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.
- (e) *Transcript of proceedings.* The 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 on ethics or by 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 on ethics prepare a transcript from recording instruments and the commission on ethics grants such request, the respondent shall pay the commission on ethics the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript.
- (f) *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 on ethics 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.
- (g) *Motions to dismiss filed by advocate.* After probable cause is found and a public hearing is ordered by the commission on ethics, 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 the 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 on ethics in accordance with the procedure provided for in section 2-260(i).

(h) *Public order imposing penalty.* Upon completion of any hearing initiated under this subsection, the commission on ethics shall make a finding and public report as to whether any provision within its jurisdiction has been violated. If the commission on ethics finds, by clear and convincing evidence, based upon competent substantial evidence in the record, that a violation has been committed, the commission on ethics shall issue an order imposing the appropriate penalty as provided in the ordinance being enforced. The public report and final order shall include a determination as to whether the violation was intentional or unintentional. 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. If a person fails to comply with an order issued by the commission on ethics, the commission on ethics 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.