

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

**WORKSHOP  
DECEMBER 13, 2012**

**THURSDAY  
3:10 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

**I. CALL TO ORDER**

**II. ROLL CALL**

MEMBERS:

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

STAFF:

Leonard Berger, Assistant County Attorney  
Wayne Condry, County Human Resources (HR) Director  
Alan S. Johnson, Esq., COE Executive Director  
Gina A. Levesque, COE Executive Assistant  
Brad Merriman, Assistant County Administrator  
Leilani Yan, County HR Recruitment and Selection Manager

ADMINISTRATIVE STAFF:

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

**III. INTRODUCTORY REMARKS**

Commission on Ethics (COE) Executive Director (ED) Alan Johnson stated that a quorum was present.

### **III. – CONTINUED**

Commissioner Manuel Farach said that communication devices should be turned off or silenced, and that comment cards should be given to Gina Levesque, COE executive assistant.

### **IV. WORKSHOP – SELECTION PROCESS FOR EXECUTIVE DIRECTOR**

Commissioner Farach said that the COE had voluntarily agreed that each member would not receive communications from potential applicants or from anyone advocating on behalf of an applicant.

**MOTION to approve that COE members not speak to an individual applicant or to anyone advocating on behalf of an applicant. Motion by Ronald Harbison.**

Commissioner Robin Fiore said that communication was permitted for recruitment purposes, such as referring potential applicants to a particular Web site; however, substantive conversations, such as describing the position to someone, were not permitted.

**MOTION SECONDED by Robin Fiore.**

Commissioner Farach said that the COE had agreed not to make public statements regarding potential applicants outside of COE meetings. He added that the COE members should not take positions regarding potential applicants.

Commissioner Fiore said that before conducting interviews, COE members should remain open-minded and not form opinions based on documents, such as curricula vitae and various reports.

Commissioner Daniel Galo said that he envisioned possibly discussing the application review process with someone other than an applicant.

Commissioner Ronald Harbison responded that it probably would not preclude any due diligence from Commissioner Galo regarding his application reviews.

Commissioner Galo said that he supported not disclosing applicant preferences outside of COE meetings, but he was unable to ensure that he would not discuss his thought processes about an applicant's review or investigation.

#### IV. – CONTINUED

Commissioner Patricia Archer said that the crux of the issue dealt with not discussing specifics about an individual candidate or a candidate's qualifications.

Commissioner Farach said that the third agreed-upon matter was that written communications or endorsements would be sent to the COE as a whole or to central staff.

Assistant County Administrator Brad Merriman stated that Leilani Yan, County Human Resources (HR) Recruitment and Selection Manager, would be the COE's point person.

Commissioner Farach summarized the motion to be no private lobbying, no public statements advocating a candidate, and communications would be to the COE as a whole as opposed to individual COE members.

Commissioner Galo said that he thought the requirement was no public statements about any aspect of a candidate, not just advocating.

Commissioner Farach clarified that the motion would include no public statements either in favor of, or opposed to, a candidate.

**SUBSTITUTE MOTION to approve no private lobbying for a candidate, no public statements favoring or opposing a candidate, and that communications would be to the COE as a whole as opposed to individual COE members. Motion by Ronald Harbison, seconded by Daniel Galo, and carried 5-0.**

Mr. Merriman stated that:

- The main decision point for the COE members would be re-reviewing the job description and the proposed advertisement to ensure that the descriptions and the qualifications were arranged before the job was announced.
  - The job advertisement would include the salary range, which was entered into the County's pay scale system.
  - The scope of the job advertisement was unlimited. The scope for the initial hire was very broad and included publications, journals, and newspapers outside the county.

#### IV. – CONTINUED

- Upon advertisement for the initial hire, applications and resumes were accumulated by HR and sent to the COE members.
  - The COE members reviewed and individually ranked the applications.
  - During a public COE meeting, the ranked applications were described, and ultimately an interview group was determined.
  - A public interview process was conducted, and a candidate was selected.

Ms. Yan said that the advertisement ran for approximately two-and-a-half weeks and had netted 48 applicants. She added that the COE public meeting to shorten the list of candidates had occurred approximately three weeks after the application period's closing date.

Commissioner Fiore said that during the initial hire, some candidates were interviewed who did not meet the qualifications, and she did not want that to reoccur.

Commissioner Harbison said that he favored how the initial selection process was handled. Commissioner Galo said that the initial process appeared to be reasonable.

Mr. Merriman commented that during the County's selection process, some staff-level vetting was done to eliminate candidates that did not meet minimum qualifications.

Commissioner Farach said that he supported using the same selection process that was used for the initial hire.

Commissioner Archer said that she wanted staff to perform an initial culling of applications, and then place all candidates' applications in two groups: those that met, and had not met, the qualifications.

#### IV. – CONTINUED

Mr. Merriman said that:

- College degrees and certifications were considered “hard and fast” qualifications, but staff had suggested some latitude for length of service.
- Staff would work with the COE members if they desired a minimum threshold of qualifications for education, credentials, and experience.
- Nationwide, there was a limited number of individuals who performed the duties of a COE ED.
- Staff had built two levels of qualifications into the ranking process, minimum requirements and preferences, but it was the COE’s decision whether to utilize them.

Commissioner Galo commented that the COE should expect that candidates met its objective criteria of “hard and fast” qualification requirements. He said that the COE’s preferences would not change the fact that a candidate did not qualify for the job. He added that the best qualified candidate should be matched with the personalities of staff and the COE members.

Commissioner Archer said that:

- The COE should consider someone who met most of the requirements and possessed factors that compensated for the lacking requirements.
- With the COE’s consensus, staff could divide the applications into three categories:
  - those that absolutely met the requirements;
  - those that had potential to meet them or were exceptionally close; and,
  - those that absolutely did not meet them.

Commissioner Harbison clarified that staff had initially separated candidates into two categories.

#### **IV. – CONTINUED**

Commissioner Fiore stated that two categories could be implemented; however, she would only read applications from qualified candidates.

Commissioner Galo expressed concern about dividing candidates into two categories since the candidates either met or had not met the requirements.

#### **MOTION to consider only applicants who meet the minimum requirements as defined in today's meeting. Motion by Daniel Galo.**

Mr. Merriman said that the minimum qualifications were listed under the paragraph heading, Successful candidates will possess, contained on page 2 of the February 8, 2010, job advertisement. He added that preferential qualifications were listed under the heading, Preferred qualifications.

Commissioner Fiore said that if the COE decided to require the listed minimum qualifications, the referenced paragraph should be rewritten.

Commissioner Farach suggested that the paragraph on page 2 should state, Successful candidates must possess, to reflect Commissioner Galo's concern, and for consistency throughout the document.

#### **MOTION SECONDED by Robin Fiore.**

Mr. Merriman said that salary grade E08 started at \$110,000, and that the salary range was very broad.

Commissioner Fiore commented that changes in salary increases or in the economy had occurred during the last three years. She expressed concern that the job advertisement reflected the same salary range that was posted three years ago for the initial hire.

Mr. Merriman said that:

- Executive-level positions had 10 pay grades, each containing an assigned salary range. The range was based on many factors, including the level of responsibility and the South Florida market.
- When a vacancy occurred, staff attempted to hire near the base range since they believed that was what the market would reflect.

#### IV. – CONTINUED

- The COE had flexibility to hire at 10 percent above the minimum executive-level pay range. Above 10 percent would require the county administrator's approval.
- Human resources staff could conduct a salary survey for the COE and other EDs employed by other Florida counties.

Commissioner Fiore expressed concern that the current COE ED salary did not reflect that of an attorney.

Mr. Merriman said that the COE could postpone attaching a salary range to the document today. He suggested that the COE individually review the collective body of work for the advertisement and bring back a final draft.

Commissioner Archer suggested that the COE could briefly meet sometime next week.

Assistant County Attorney Leonard Berger said that the COE ordinance did not address the salary range issue. He added that the COE could set the range within reason, but budgeting decisions were ultimately made by the Board of County Commissioners.

Mr. Merriman clarified that the COE would have a 10 percent leeway from the minimum of whatever salary range was established.

Commissioner Archer said that she favored a latitude of up to 20 percent of the minimum salary range.

**MOTION to direct HR staff to research an appropriate salary range, and to advise whether an adjustment was needed. Motion by Robin Fiore.**

**MOTION DIED FOR LACK OF A SECOND.**

Mr. Merriman said that staff could perform the salary survey within a few days.

Mr. Johnson said that public notice requirements did not provide a specific timeframe for advertisement so the COE members could publicly meet within four to five days, or next week.

#### IV. – CONTINUED

Mr. Merriman said that:

- The COE could describe a salary range in the advertisement, but it was typically not done by HR staff since the description could give candidates some false hope.
- All County positions had a broad salary range since it was expected that individuals would be brought in near the bottom range, then progress through the ranks.

Commissioner Harbison requested that COE staff receive appropriate pay increases that fit within the COE's budget.

Mr. Johnson said that:

- The minimum qualifications that a successful candidate would possess were created in 2010 when no one knew what the ED's position would entail.
- It was originally believed that the position would involve more investigatory and conspiracy-oriented duties. In reality, the position involved advisory, legislative, and quasi-judicial situations, and training public officials, vendors, and lobbyists of their obligations under a specific set of laws.
- The language contained in the February 8, 2010, job advertisement paragraph under the heading that began, Successful candidates will possess, should be changed to reflect the actual job duties.

Mr. Berger commented that the preferred qualifications in the original job advertisement were almost identical to the Inspector General (IG) since the language was taken from the IG's ordinance.

Mr. Merriman suggested that Ms. Yan and Mr. Johnson could formulate a draft job advertisement for review at the next COE meeting.

Commissioner Fiore stated that Mr. Johnson's job description depicted a higher level of qualifications, but the COE was seeking minimum qualifications.

Commissioner Harbison said that he wanted to base the job description on what the COE now knew the job functions to be.



#### **IV. – CONTINUED**

Mr. Merriman clarified that the ED job description contained the day-to-day responsibilities, duties, and functions; the job advertisement described the qualifications necessary to perform the job description.

Commissioner Fiore said that she wanted the qualifications expressed more as competencies and not longevity.

Commissioner Farach said that by consensus, the COE would meet on December 19, 2012, at 5:00 p.m. to discuss the salary survey, and the redrafting of the job advertisement and the job description.

#### **MOTION WITHDRAWN.**

Mr. Merriman requested that the COE review the scope of the job advertisement and bring back staff direction at the December 19, 2012, meeting.

Commissioner Archer said that she wanted to discuss whether the ED should be an attorney in good standing with the Florida Bar.

Commissioner Fiore said that she wanted to hire a qualified ED from the county, and that some internal employees were also qualified for the position.

Commissioner Harbison stated that:

- Advisory letters were essentially opinion letters similar to those written by attorneys or tax accountants. They tended to be highly technical, legalistic, and bore significant professional liability.
- Nationwide, 50 of the 57 COE EDs were attorneys.
- The COE's small staff may necessitate that the ED also perform investigatory or staff counsel work for timely production of advisory opinions.

Commissioner Fiore said that the ED should be an attorney since Mr. Johnson was essentially rendering legal opinions when he discussed or explained the Code in relation to advisory opinions. She added that the person in charge of the COE's daily work should have legal proficiency and be a trained attorney.

#### IV. – CONTINUED

Commissioners Archer and Galo said that they agreed that the ED should be an attorney.

Commissioner Farach said that he would allow public comment regarding the ED's eligibility and qualifications.

Tina White said that she disagreed that only an attorney could effectively provide guidance in carrying out the COE's mission. She stated that having a COE established Code made it unnecessary for the ED to bring an attorney to a public setting. She added that the COE was limiting its applicant pool by allowing only attorneys who were Florida Bar members. She asked that the COE schedule a publicly noticed workshop specifically for community input.

Lia T. Gaines, local president of the National Association for the Advancement of Colored People, asked that the COE receive and file a December 12, 2012, letter to the COE. She recommended that the COE amend its bylaws to broaden the applicant pool by removing the requirement that the ED be a Florida Bar member. She said that if a Florida Bar attorney was required, that the COE consider someone with legal ethics expertise.

Lynne Hubbard said that she supported the two previous speakers' comments, and that a national search was unnecessary.

Richard Radcliffe, League of Cities ED, said that until the COE retained more legal staff, it necessitated requiring that the ED also be an attorney. He added that there was sufficient local talent from which to choose a candidate.

Mr. Johnson said that the COE's by-laws, article V., section 1 stated the following: The ED shall be a member of the Florida Bar.

Commissioner Farach said that there was a request to change that requirement, and that the COE members had previously expressed their opinions. He added that the next issue was determining whether the scope of the job advertisement would be local, statewide, regional, or national.

Mr. Harbison said that he was unsure whether the advertisement should be limited to only Palm Beach County, but it could be limited to Florida.

Commissioner Fiore said that she preferred searching in Palm Beach County; however, she did not object to a statewide search.

#### IV. – CONTINUED

Commissioner Archer said that she had no objection to a statewide search; however, she believed that the COE was more interested in someone familiar with the South Florida area. She stated that a South Florida search would involve approximately four or five counties, which could be combined with Palm Beach County.

Mr. Merriman said that relocation expenses were provided within the County's rules.

Commissioner Galo stated that the search should be as broad as possible, then define selection criteria based on the applications received. He suggested a statewide search of candidates, which may include the cost of relocation.

Mr. Merriman said that a statewide search would involve utilizing the County's Web site and possibly the Florida Bar Journal or another appropriate publication.

#### **MOTION to receive and file the letter submitted by Ms. Gaines. Motion by Robin Fiore, seconded by Patricia Archer, and carried 5-0.**

Mr. Merriman said that:

- The COE could assign Ms. Yan to draft a job description and advertisement with Mr. Johnson.
- Ms. Yan and Mr. Condry could then draft a proposed scope and timeline based on the County's normal process for a statewide search.
- The position would normally be advertised for two-to-four weeks with a closing date, and it could be placed sometime in January 2013.

Mr. Harbison said that he preferred to limit an acting ED's timeframe. He suggested a shorter advertising period and an extension if necessary.

Mr. Merriman said that staff would present the most compressed timeline, which could be extended.

Ms. Yan commented that in addition to applying online, candidates could scan paper applications into the Web site.

#### IV. – CONTINUED

Mr. Johnson said that:

- Two interim ED recommendations were a supervisor of investigations who was also an attorney, and the COE's staff counsel.
- Both staff members had mentioned possibly applying for the permanent position, but they could serve as co-acting interim EDs.
  - Dual interim EDs would not give one person an advantage over the other and would keep harmony in the office.
  - Both individuals had the skillsets to sign advisory opinions, and process memorandums of understanding and legal sufficiency memorandums.
- If the COE wanted him to recommend one interim ED, he requested one week to decide.

Commissioner Farach expressed concern that two interim EDs would call into question which one would make a final decision and how the two duties would be separated.

Mr. Johnson said that:

- The better position transition would be Megan Rogers in terms of her advisory opinion presentations.
- Although Ms. Rogers lacked investigative experience and had not reviewed legal sufficiency, both processes were discussed with staff.
- Most of staff's work was not handling complaints, but was self-initiated due to anonymous tips.
- He and staff had personally been to the City of Riviera Beach to offer outreach and training.
- Since a pay differential would exist between the two qualified recommendations, he suggested that the pay be split, and that Ms. Rogers be selected as acting ED.

#### IV. – CONTINUED

- Mark Bannon performed the investigative work and could handle the legal sufficiency memos, and reviewing of probable cause memorandums. He had previously handled advisory opinions before staff counsel was hired.
- Ms. Rogers handled more outreach meetings, and handled most of the advisory opinions, which he edited.

Mr. Merriman said that:

- Someone appointed as a County acting director would either receive a 10-percent increase or a minimum of the pay grade.
- Generally, it was not HR's policy to appoint two acting EDs.
- A pay increase would only go to whoever was selected as acting ED. Pay increase considerations could potentially be made for someone taking on the acting ED's previous work load or responsibilities.

Commissioner Archer said that she wanted to wait until the December 19, 2012, meeting to make a final decision on an acting ED.

Commissioner Fiore suggested that the two referenced parties express their thoughts on how they wanted to proceed before the next meeting.

Commissioners Galo and Archer said that they supported giving Mr. Johnson an extra week.

Commissioner Harbison said that choosing an acting ED could be done at the January 2013, meeting or at any other time before January 11, 2013.

Commissioner Fiore stated that she wanted to make any decisions by next week.

Mr. Johnson said that he would present a plan at the December 19, 2012, meeting.

Commissioner Fiore said that she had total confidence in Ms. Rogers and Mr. Bannon.

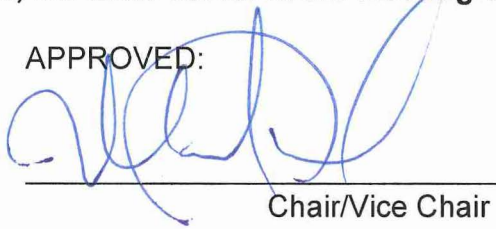
V. PUBLIC COMMENTS – None

VI. ADJOURNMENT

**MOTION to adjourn the meeting. Motion by Patricia Archer, seconded by Robin Fiore, and carried 5-0.**

**At 5:17 p.m., the chair declared the meeting adjourned.**

APPROVED:

A handwritten signature in blue ink, consisting of several loops and flourishes, is written over a horizontal line. The signature is positioned to the left of the text 'Chair/Vice Chair'.

Chair/Vice Chair