

**MINUTES OF THE
COMMISSION ON ETHICS
PRELIMINARY HEARING
THURSDAY, JUNE 6, 2013 – 12:00 P.M.**

**PALM BEACH COUNTY COMMISSION CHAMBERS
West Palm Beach, Florida**

MEMBERS:

Manuel Farach, Esq., Chair
Steven Cullen, Esq., Executive Director

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Gina A. Levesque, COE Intake Manager
Megan C. Rogers, Esq., COE Staff Counsel

ADMINISTRATIVE STAFF:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

OTHERS PRESENT:

Mark Herron, Esq., attorney for Robert Margolis

Levesque: Yeah, we're ready.

Farach: Very good. Madam Clerk, are you ready?

Clerk: Yes.

Farach: Very good. This is a preliminary hearing in the case of Mayor Robert Margolis, case number C-13-001. Who do we have here for the commission?

Rogers: Megan Rogers for (inaudible).

Farach: Very good. Ms. Rogers, if you could approach that stand there. And for the respondent?

Herron: Mark Herron for Bob Margolis.

Farach: Welcome, Mr. Herron. Folks, I know that, from the e-mails I've received, that the two of you have been working on a case management conference order, and I understand that it's pretty close to done if not done. Would that be correct, counsel?

Herron: It's my understanding it is done.

Farach: Okay. It is the last one that – it was transmitted between your office and Mr. Herron's office, Ms. Rogers?

Rogers: Yes, sir.

Farach: Okay. Very good. I only had one question. And that was the length of the hearing, the final hearing itself. It says that it's set for one day, but additional days may be scheduled as necessary. And I take it that you all have discussed that and are quite in agreement on that issue.

Herron: I am in agreement on that issue. It all depends in terms of – as you know, the order speaks in terms of witness lists being exchanged. I have submitted some discovery to the commission, trying to ferret out what they think their witnesses would be and who has knowledge of these allegations. And that will, I think, drive the length of the hearing.

Farach: At the outside, Mr. Herron, what do you think?

Herron: At the outside, I think you may need two days' done, in all honesty. But again, it depends on cross-examination, the kind of issues I get into.

Farach: Of course. Let me do this. Having sat as an arbitrator for many years, I'd like to set outside as opposed to, go one day, then not finish, and have to come back a month later. It's tough on counsel, even tougher on the parties.

Herron: I agree with you a hundred percent. I had to do one of these at the elections commission. We did four days over four months, with different members of the commission.

Rogers: Oh, my goodness.

Herron: It's atrocious.

Farach: Okay. I see August eighth. The original date scheduled is a Saturday – excuse me, a Thursday. Is that correct?

Rogers: Yes, sir.

Farach: Mr. Herron, would you and your client be available August ninth, if we had to go that date?

Herron: We are.

Farach. Okay. Presuming that we're not able – and you're available as well, Ms. Rogers?

Rogers: Absolutely.

Farach: Presuming we're not able to finish on the ninth, what is the preference of the parties in terms of possibly going a third day?

Herron: Your Honor, when I – I mean, Mr. Chairman, when I was –

Farach: That's better.

Herron: I apologize. When I was doing these things for the ethics commission, I was acting as a hearing officer. I would always encourage the parties to work on Saturday.

Farach: I have no problem with that. But I do recognize – the reason I asked the question I did the way I did, Mr. Herron, I realize that your home office is in Tallahassee. And not here. So if (inaudible) I'll be in the office on Saturday anyway. And I know Ms. Rogers also works very hard. So I suspect she might be as well. Are we inconveniencing you if we go on Saturday?

Herron: Not at all.

Farach. Okay, that's the first question. And that's fine by all parties. And the chair. Is there an issue with the BCC chambers on Saturday?

Levesque: I'm looking that up now, sir.

Farach: Ms. Levesque is a step ahead of us. So let's hold off for just a second, and she'll confirm. Because obviously the concern is having these matters in a public forum.

Levesque: Mr. Farach, what was the first day that you requested the first date?

Farach: The first day of the final hearing is August eighth. So we would need to confirm that – I believe you've already cleared, Ms. Levesque?

Levesque: August eighth is already scheduled. What is the next date?

Farach: August ninth.

Levesque: Okay, that date is also available.

Farach: If we could hold the BCC chambers for that date, if that's possible for you to do that, Ms. Levesque?

Levesque: Okay.

Farach: I guess the key question – we may not be able to get an answer today – is whether Saturday, August tenth, is possible.

Levesque: If it's scheduled – if we schedule it, it (inaudible) made available.

Farach: Why don't we go ahead and schedule it. Can – are you familiar – I don't know the process for scheduling, and then unscheduling in case we finish. Because I don't want to force security guards and everybody else down here on a Saturday.

Levesque: Right.

Farach: If we can avoid it.

Levesque: Would you like me to (inaudible)?

Farach: Saturday?

Levesque: Yes.

Farach: Yes, please.

Levesque: Eight to five?

Farach: Probably eight-thirty to five, yes.

Levesque: Okay.

Herron: I'm a North Florida guy. We start early. When the chickens get up.

Levesque: Okay.

Farach: And let's do this, if we can, counsel. Again, the concern is the three of us are going to be here. We're going to be working anyway, in one form or another. I don't want to make staff work if we don't need to, so if it appears from the trial preparation that we're going to need a Saturday, or an additional day, perhaps we can also think about a Monday. People will be here anyway. And that – if anyone is going to be inconvenienced by that, it's going to be you, Mr. Herron. Because we're either going to have to spend the weekend here, or drive up and back, or travel back – up and back.

Herron: We will be available Monday as well. Don't feel bad about it.

Farach: Okay.

Herron: But I think, in all honesty – I know you're planning for the outside and worst-possible scenarios – I think we're going to be two, maybe the max where we'll go, but who knows.

Farach: Okay. I appreciated your courtesies in helping us schedule this. Ms. Levesque, is there any chance the chambers are available on Monday, the twelfth?

Levesque: They are available on Monday. They are not on Tuesday.

Farach: Can you hold Monday August twelfth as well?

Levesque: Yes, sir.

Farach: Thank you. All right. So, if we could make those changes to the proposed scheduling order?

Rogers: Absolutely.

Farach: Ms. Rogers, run the changes past Mr. Herron. And once he approves by e-mail, forward it to me, Mr. Herron. I'll sign and get that out. I also – Mr. Herron, I asked Ms. Rogers to send you some rules that I've used in past arbitrations just to let parties know where we stand and how we do things. And I understand Ms. Rogers shared those with you.

Herron: She did. I have no problem, question, with respect to any of them.

Farach: Okay.

Herron: They seem to be quite appropriate, professionalism guidelines or whatever you want to call them. So I've got no problem.

Farach: And these are general guidelines. I guess your description is probably more apt than my rules description. Meaning that, obviously, as the entire panel decides certain matters, they may decide to do things a little bit different. But I did not want you to walk in here – either one of you – and be surprised as to what the panel may want to do. Is there anything further that we need to take up, Ms. Rogers?

Rogers: Not from me, sir.

Herron: There's perhaps two issues. One is, I served on staff this morning, and Ms. Rogers – my first request for discovery subpoenas, under your rules, I have to request the subpoenas from you – and if the subpoena is duces tecum, which these four are, describe with particularity the documents that I want – I have done that. I have submitted those to you through staff. And again, as I understand it, you are the one that issues those subpoenas.

Farach: All right. I will look at them today and issue them today if appropriate.

Herron: The second issue is – and Ms. Rogers and I talked about this a little bit – is that the rules of discovery don't necessarily fit in their timeframes with the quick timeline on this hearing. So we've discussed the possibility of agreeing between ourselves to shorten some deadlines, if the case arises.

Farach: It would be fine by me.

Herron: And, you know, usually you have to go to the judge to get that done, but we just wanted to let you know that we may do that, and I don't know if we have to send it to you to do that, but –

Farach: You do not. What I would recommend, however, is if – let's say you all agree to shorten the time for responses to request for admissions from thirty down to fifteen days.

Herron: Mm-hmm.

Farach: By way of example – just confirm that with each other in an e-mail, that’s all you need to do. Now, you don’t need to submit it to me one order or anything changing the rules or whatever. If counsel can agree amongst themselves how to do the certain procedures and timeframes, that’s all the better. I don’t need to be involved in preparing your cases, but I am here in case there’s a discussion or failure to agree on an issue –

Herron: Mm-hmm.

Farach: Just call us up, and we’ll be happy to schedule something very quickly, recognizing the fact that this hearing is coming up on August eighth. Meaning, if the parties aren’t able to agree on any issue whatsoever, I would hope that after discussing the issue, the parties still not being able to agree, that we could schedule a hearing within the space of a few days. The point being is that, I want both sides to have a full and fair opportunity here in their cases for trial. And if there’s a discovery dispute – as both counsel know, that makes it very difficult to prepare for trial.

Clerk: (Inaudible.)

Farach: Sure. If there’s a discovery issue, discovery disagreement, it makes it very difficult for both sides to prepare for trial. So I’d rather spend a little time up front getting rid of those issues and resolving them than having your clients delayed in their trial preparations. So do not feel the least bit shy about contacting me to discuss certain things, if there’s a failure to agree.

Rogers: Very good.

Herron: Thank you, Mr. Chair.

Farach: Is there, Ms. Rogers –

Rogers: Just in regard to the subpoenas – we’ve received the request for subpoenas. The staff will prepare the subpoenas for your signature, and you’ll receive them tomorrow or on Monday.

Farach: Okay. Well, the sooner the better. I’d like to get them out so the parties can start producing the documents, requesting the documents, getting the documents put together. This is a little bit an unusual situation, Mr. Herron, in the sense that one party seems to have all the documents by virtue of the charging documents, but yet the respondent may not have all the documents. Are you comfortable that you can prepare this case fully and fairly?

Herron: Oh, without a doubt.

Farach: (Inaudible.)

Herron: Without a doubt.

Farach: And I'm not questioning. I'm just asking, to make sure you don't have any folks going out of town for whatever period of time that –

Herron: Oh, I do have people going out of town, but, I mean – there's a potential witness that, you know, is out of state. Is going to be out of state for four months. And so there may be the issue – we may have to take a deposition out of state, so we can have that witness' testimony here.

Farach. Understood. Understood. So – but, you're comfortable with where you are in terms of your ability to prepare for your client?

Herron: I am very comfortable, yes, sir.

Farach: Very good. Very good. Ms. Rogers, is there anything else we need to take up today?

Rogers: No, Mr. Chair.

Farach: Very good. Mr. Herron, is there anything else we need to take up today?

Herron: I don't believe so, thank you.

Farach: And thank you again, Mr. Herron, for making the trip down here. You're always welcome to attend telephonically. So you're always welcome to take advantage of that. I realize it is a bit of a trip from here to Tallahassee and back.

Herron: I appreciate that. Thank you.

Farach: There being no further matters, I presume, Mr. Cullen, we're able to conclude this preliminary hearing at this time?

Cullen: Yes, Mr. Chair, thank you.

Farach: Very good. The preliminary hearing in C-13-001 is concluded. Thank you.

ADJOURNMENT: 12:21 p.m.