

EXECUTIVE SUMMARY

To: Alan Johnson, Executive Director
From: James A. Poag, Investigator
Re: C11-028– Respondent: Jeffrey Kurtz-Village of Wellington

- **Background**

This matter came to the attention of the Commission on Ethics' staff via a sworn complaint signed on December 21, 2011 by Ms. Carol Coleman (Complainant). Attached to the sworn complaint form was a letter (Complainant's Statement) addressed to the Palm Beach County Commission on Ethics (COE). The Respondent listed under this Complaint is Mr. Jeffrey Kurtz, Attorney for the Village of Wellington. Respondent is a contract employee of the Village of Wellington and as such, became subject to the jurisdiction of the COE as of June 1, 2011.

The Complaint alleges that on December 14, 2011, the Equestrian Preserve Committee (the Committee) met to discuss and vote on planning and zoning amendments for the proposed Equestrian Village Project. According to the Complainant's statement, after the meeting was called to order, Respondent, Village Attorney for Wellington, advised the members of the Committee that if anyone had a conflict of interest in this matter they should recuse themselves from participation in the discussion and abstain from voting on the issue. The Complainant alleges that Dr. Swerdlin has a known business relationship with Mr. Mark Bellisimo and Equestrian Sports Productions (ESP-the applicant for the Equestrian Village Project), and could gain financially from the actions of the Committee. The Complaint states that despite the admonishment by Respondent to all Committee members to recuse themselves from participation and to abstain from voting if they had a potential conflict of interest, Dr. Swerdlin participated in discussions until the point that a vote was called in the matter, at which time he abstained and did not vote. The Complainant alleges that Respondent was aware of Dr. Swerdlin's business relationship with ESP; however, he failed to take additional action that would have prevented Dr. Swerdlin's participation in the discussion.

- **Investigation**

The inquiry revealed, on December 14, 2011, at the beginning of the Committee meeting where the Equestrian Village Project was to be discussed, Respondent advised the Committee members that if any member had a potential conflict of interest, they must declare the conflict, not participate in the discussion of the project, and abstain from voting on the issue.

A review of the video evidence further revealed at a point later in the meeting, Respondent again admonished Dr. Swerdlin directly regarding his actions in attempting to obtain an informal recommendation by the Committee. He advised him that the conflict could not be resolved simply by asking for an informal recommendation. Respondent further advised Dr. Swerdlin that his request for an informal poll of Committee members would be considered a formal vote on the matter.

Despite admonishment by Respondent, Dr. Swerdlin failed to disclose any conflict of interest, continued to chair the Committee meeting as the Equestrian Village Project was discussed, and actively participated in these discussions.

Even if the allegations as written are true, the Respondent's actions or failure to act would not constitute a violation of §2-443 (a) *Misuse of public office or employment (1-7)* or (b) *Corrupt misuse of official position*. As the legal advisor to the Committee, it is not the responsibility of Respondent to determine whether or not a member has a conflict of interest. His duty is to advise members on legal issues that directly affect the Committee and its decisions. Respondent does not have the authority, nor does the Code require him to force a member to not participate or abstain from voting. Once the member had been advised by Respondent with regards to a possible conflict of interest, the decision to not participate and abstain from voting rests with the individual Committee member.

- **Conclusion**

Assuming the allegations by Complainant are true. Mr. Kurtz, as the legal advisor to the Committee, has no obligation to act beyond advising members on legal issues that directly affect the Committee and its decisions. His omission to act beyond that point would not violate the PBC Code of Ethics. Thus, this complaint is **legally insufficient** to open an investigation at this time.



PALM BEACH COUNTY COMMISSION ON ETHICS

2633 Vista Parkway, West Palm Beach, Florida 33411

Hotline: 877-766-5920 or 561-233-0724

COMPLAINT FORM

1. Complainant (Person bringing Complaint) Add pages, if necessary.

Name: Carol Coleman
Address: 14224 Stroller Way
City: Wellington Zip: 33414
Home #: 561-792-2290 Work #: 201-739-2013 Cell #: as work

2. Respondent (Person against whom complaint is made) Add pages, if necessary.

Name: Mr. Jeffrey Kurtz, Wellington attorney
Address: 50 Village of Wellington, 12300 Forest Hill Blvd.
City: Wellington Zip: 33414
Home #: _____ Work #: 561 791-4000 Cell #: _____
Title/Office Held or Sought: Village Attorney

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

☒ Allegation is against person in
County Government

☐ Allegation is about County:
Whistleblower Retaliation

4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

Carol Coleman
Signature of Person Making Complaint

STATE OF FLORIDA

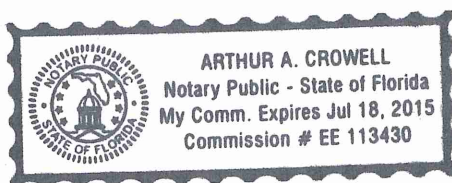
COUNTY OF Palm beach

Sworn to (or affirmed) and subscribed before me
this 21 day of December 2011, by

Carol Coleman

(Name of Person Making Statement)

who is personally known to me X or produced
identification _____. Type of identification
produced:



Arthur A. Crowell
(Signature of Notary Public, State of Florida)

Arthur A. Crowell
(Print, Type, or Stamp Commissioned Name of Notary Public)

Palm Beach Country
Office of the Inspector General
Commission on Ethics

December 15, 2011

To the Inspector General and the Commission on Ethics:

Last night, December 14, I attended the Equestrian Preserve Committee Meeting, and I feel there were several violations that occurred. These violations involved Mr. Jeff Kurtz, the attorney for the Village of Wellington and Dr. Scott Swerdlin, the chair of the committee. After the meeting was called to order by Dr. Swerdlin, Mr. Kurtz explained that if anyone on the committee had a conflict of interest they must recuse themselves from the dais and leave the room since they were not allowed to partake in any of the discussions on the matter brought before them by the petitioner. Dr. Swerdlin has a business relationship with the petitioner and gains financially from the action taken by the committee. At the end of the meeting, a vote was called for and Dr. Swerdlin then recused himself from the vote sighting a conflict of interest. Dr. Swerdlin's participation in the discussions had a direct influence on the members of the committee and I feel he should have recused himself before the presentation by the petitioner and should not have taken part in any of the discussions.

Dr. Swerdlin has a contract with ESP and Mr. Mark Belissimo and has had to recuse himself from other applications that have come before the Equestrian Preserve Committee. This was not brought to the attention of the committee or to the audience who rely on the fair and knowledgeable decisions made by this committee.

I am aware that Mr. Kurtz, as the attorney, can only advise the members of the committees as to their responsibilities; however it should also be noted that Dr. Swerdlin has already indicated his conflict on other occasions and I feel that it was Mr. Kurtz's responsibility to at least remind him of that fact.

I might also add that as well as Dr. Swerdlin's contract conflicts that he also would benefit financially from the change in use for the property that is directly across the street from him. He has a boarding facility and apartments for grooms on his property where he could increase his rentals to reflect the proximity to these new show grounds as well as increasing the value of his land in general.

It should also be noted that Mr. Kurtz called Mr. Michael Whitlow, the vice chair of the Equestrian Preserve Committee, regarding recusing himself from the meeting and vote just days before the meeting. Mr. Whitlow had to tell Mr. Kurtz to contact his counsel regarding any issues Mr. Kurtz had regarding any conflicts of interest. Mr. Whitlow's attorney received

a written letter from Mr. Kurtz and responded that he did not see any conflicts of interest with Mr. Whitlow since he has no contracts and does not gain financially from the petitioner. It is odd that Mr. Kurtz did not it necessary to contact a member of the committee before the meeting who has had prior conflicts of interest with the petitioner.

The actions of these individuals will greatly affect the character of Wellington and the Equestrian Community. The rural lifestyle and the preservation of the equestrian areas are in jeopardy if actions like these are not investigated.

Respectfully,

A handwritten signature in cursive script that reads "Carol Coleman". The signature is written in black ink and is positioned above the printed name and titles.

Carol Coleman

Recognized Judge of the United States Equestrian Federation

Senior Judge of the Canadian Equestrian Federation

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INQUIRY

To: Alan Johnson, Executive Director
From: James A. Poag, Investigator
Re: C11-028 – Respondent: Jeffrey Kurtz-Village Attorney, Village of Wellington

- **Background**

This matter came to the attention of the Commission on Ethics' staff via a sworn complaint signed on December 21, 2011 by Ms. Carol Coleman (Complainant). Attached to the sworn complaint form was a letter (Complainant's statement) addressed to the Palm Beach County Commission on Ethics (COE). The Respondent listed under this Complaint is Mr. Jeffrey Kurtz, Attorney for the Village of Wellington. Mr. Kurtz is a contract employee of the Village of Wellington, performing a government function and therefore became subject to the jurisdiction of the COE as of June 1, 2011.

The Complaint alleges that on December 14, 2011, the Equestrian Preserve Committee (the Committee) met to discuss and vote on planning and zoning amendments for the proposed Equestrian Village Project. According to the Complainant's statement after the meeting was called to order, Mr. Jeffrey Kurtz, Village Attorney for Wellington, advised the members of the Committee that if anyone had a conflict of interest in this matter they should recuse themselves from participation in the discussion and abstain from voting on the issue. The Complainant alleges that Dr. Swerdlin has a known business relationship with Mr. Mark Bellisimo and Equestrian Sports Productions, (the applicant for the Equestrian Village Project), and could gain financially from the actions of the Committee. The Complaint states that despite the admonishment by Mr. Kurtz to all Committee members to recuse themselves from participation and to abstain from voting if they have a potential conflict of interest, Dr. Swerdlin participated in discussions until the point that a vote was called in the matter, at which time he abstained and did not vote. The Complainant alleges that Mr. Kurtz was aware of Dr. Swerdlin's business relationship with Mr. Bellisimo; however, he failed to take additional action that would have prevented Dr. Swerdlin's participation in the discussion.

The allegations raised against Dr. Swerdlin, have been addressed in a separate investigation under complaint number C11-027.

- **Inquiry**

On December 27, 2011, the Complaint was assigned to this investigator for follow-up action. I reviewed the Complainant's statement in its entirety. On January 5, 2012, I spoke with Ms. Jennifer Fritz, Sr. Administrative Assistant, Village of Wellington. I asked Ms. Fritz if she would provide me with a copy of the minutes from the December 14, 2011, Committee meeting. Ms. Fritz advised me that she would e-mail a copy of the minutes; however they had not been approved and were in DRAFT form. I received a copy of the DRAFT minutes via e-mail and Ms. Fritz also provided instructions to view the meeting via the Village of Wellington website located at www.wellingtonfl.gov. I reviewed the DRAFT minutes and viewed the webcast video of the December 14, 2011, Committee meeting in its entirety.

A review of the webcast video from the December 14, 2011 Committee meeting revealed at the beginning of the meeting, Mr. Kurtz admonished the members of the Committee prior to the swearing in of speakers. Mr. Kurtz advised if any member had a potential conflict of interest to declare the conflict and recuse themselves from participation. He informed them according to the rules established by the Palm Beach County Code of Ethics, it is not sufficient merely to abstain from voting, but an official must not participate in the discussion of the matter before the Commission. Mr. Kurtz suggested if a Committee member had such a conflict that the best place to watch the meeting was from the back of the room.

At no time following Mr. Kurtz statements did Dr. Swerdlin or any other member of the Committee declare a conflict or remove themselves from the dais.

The portion of the December 14, 2011 Committee meeting found in time frame (2:36:07 – 2:57:07) was transcribed and submitted to the file.

As Committee Chairman, Dr. Swerdlin requested an informal poll of committee members indicating that he wanted to send the matter to Village Council without a formal vote. During this portion of the meeting, Mr. Kurtz provided Dr. Swerdlin with his interpretation of Sec. 2-243(c) *Disclosure of voting conflict* of the Code. Mr. Kurtz also directly admonished Dr. Swerdlin about his failure to abstain from participation in the discussion about the Equestrian Village Project. Mr. Kurtz made the following statement directly to Dr. Swerdlin before the Committee voted on the Equestrian Village application:

“Dr. Swerdlin, why don’t we be frank with what is going on here. Dr. Swerdlin, when PBIEC came before this body, I believe he recused himself because, ummm, there was some sort of relationship with ahhh ESP or another entity that is related to PBIEC. Dr. Swerdlin, I think is under the impression, umm, and I do not think it is a correct impression, that if you do not take a vote, that under the rules as established by the Palm Beach County Ethics Ordinance, that he can participate in the matter. Umm, I have suggested to him that it is my reading that if you have a conflict of interest, with respect to a matter, you are, ummm, not only prohibited from voting, but prohibited from participating in the matter. It is always your individual choice as a board member knowing what the total circumstances are of your involvement, in or . . . or not in with respect to a project, that you make the determination as to whether or not you have a conflict. That is not something that the staff can determine for you. That is not something that I can determine for you. But, what I do not think is appropriate is that you try and play a semantic game as to whether or not when you ask for everybody’s agreement you are pretending you are not voting on the matter. And I suspect . . . Dr. Swerdlin is free to contradict me. I suspect that is the reason he is trying to put it . . . put forth that. Because he, as I said, I believe is under the mistaken impression, but it is his impression, and he is entitled to his impression, that if there is not a formal motion and vote, somehow, the ethics obligations are not triggered. And that is my perception of what is going on. If I am incorrect in that, Dr. Swerdlin can certainly advise us.”

- **Witness Interviews**

Following my review of the meeting, I made contact with Mr. Kurtz to set an appointment to speak with him. The appointment was set for January 11, 2012 at 12:00 PM at his office.

- **Sworn statement: Mr. Jeffrey Kurtz, Attorney , Village of Wellington**

On January 11, 2012, I went to the Village of Wellington municipal offices located at 12300 Forest Hill Boulevard, Wellington FL and interviewed Mr. Jeffrey Kurtz. The interview was recorded and Mr. Kurtz was placed under oath. No other persons were present during this interview.

Mr. Kurtz is the Village Attorney for the Village of Wellington and Advisor to the Committee. He stated the Equestrian Village Project is a new commercial development project related to dressage (a competitive equestrian sport). The location of the proposed site of this project is at the corner of Pearson Road and South Shore Road in Wellington. Mr. Kurtz stated that the applicant for this project is Equestrian Sports Productions (ESP). It is his understanding that ESP also operates Palm Beach International Equestrian Center (the Center), which is related to Wellington Equestrian Partners, LLC (WEP). In December 2011, the application for the Equestrian Village Project was submitted to the Committee for consideration.

Mr. Kurtz stated he became aware of Dr. Swerdlin’s possible conflict of interest as a result of a separate application dealing with the Center that came before the Committee during the August/September time period. Mr. Kurtz stated at that time he was advised by Dr. Swerdlin that his business (Palm Beach Equine Medical Centers, LLC) had a relationship with ESP. However, he does not know the details of the agreement or have any person knowledge

that any agreement exists. Dr. Swerdlin told him that, in exchange for being the veterinarian for the horse shows, his business gets traded in the form of advertisement. From this statement, it is Mr. Kurtz' understanding that the relationship was not a direct cash benefit relationship.

According to Mr. Kurtz, it was Dr. Swerdlin's estimation that the benefit provided to his company for the exchange of veterinary services exceeded \$10,000 over a two (2) year period. When this was brought to his attention by Dr. Swerdlin, Mr. Kurtz advised him that he had to recuse himself from participating and abstain from voting on the issue due to this relationship with the Center. It is Mr. Kurtz' understanding that as a result of this discussion, Dr. Swerdlin chose not to attend the August 28, 2011 Committee meeting (originally scheduled for August 24, 2011).

Mr. Kurtz stated he met with Dr. Swerdlin again prior to the December 14, 2011 Committee meeting regarding the Equestrian Village Project. At that time he advised Dr. Swerdlin that ESP was the applicant. Mr. Kurtz states that he told Dr. Swerdlin that if Dr. Swerdlin believed he had a conflict of interest with the Center application (a previous application submitted by ESP which came before the Committee on August 28, 2011) then he would probably have a conflict in this application. Mr. Kurtz advised Dr. Swerdlin again to abstain from voting and recuse himself from participating in this matter. Dr. Swerdlin questioned his interpretation of the Code and did not feel that he should have to recuse himself.

Mr. Kurtz stated, on December 13, 2011, he asked Rachel Callovi, Deputy Clerk for The Village of Wellington, to send Dr. Swerdlin an email message. Attached to the email was a copy of the state Conflict of Interest form (Form 8B), as well as a copy of §2-443(c) of the Code with the relevant portions underlined to add emphasis. According to the email, this information was requested by Dr. Swerdlin. (Mr. Kurtz provided a copy of the email with attachments to be added to the file) Mr. Kurtz stated that Dr. Swerdlin acknowledged receipt of the email.

On December 14, 2011, the Committee met to discuss the Equestrian Village application. Mr. Kurtz explained his understanding of §2-443(c) *Disclosure of voting conflicts* of the Code was that officials with a conflict must abstain from voting and not participate in the matter. His interpretation of not participating was to stay absolutely silent on the matter. Therefore, at the meeting he asked if any members of the Committee had a conflict of interest, to disclose that interest and abstain from voting, as well as from participation in the discussion. At no time did any Committee member make such a disclosure.

According to Mr. Kurtz, Dr. Swerdlin actively participated in the discussion involving the Equestrian Village application up to the point that the Committee was asked to vote. Dr. Swerdlin suggested the Committee did not have to vote on the matter, but could instead make an informal recommendation. Mr. Kurtz explained that at this point, he advised the Committee and specifically Dr. Swerdlin, that whatever method the Committee chose to make their recommendation would effectively count as a vote. Mr. Kurtz stated that Dr. Swerdlin seemed to believe that if the Committee did not vote on the matter, his participation in the discussion would not violate the Palm Beach County Code of Ethics. A discussion ensued where several of the Committee members questioned Dr. Swerdlin's actions. Mr. Kurtz stated he informed the Committee members that he had a prior conversation with Dr. Swerdlin regarding his interpretation of the Code and that he felt Dr. Swerdlin's understanding was in error. After a lengthy discussion on the issue, Dr. Swerdlin decided to recuse himself, and left the dais. Subsequently, a vote was taken on the pending application. The vote resulted in the Equestrian Village application being adopted unanimously by the Committee by a 4-0 vote, with Dr. Swerdlin abstaining and not present on the dais.

- **Documents Submitted to File**

1. December 13, 2011 email to Dr. Swerdlin, RE: Conflict of Interest Form & Section 2-443 Code of Ethics
2. Committee Meeting Agenda (December 14, 2011)
3. Committee Meeting Agenda (August 24, 2011-actually held August 28, 2011)
4. Committee Meeting Minutes DRAFT (December 14, 2011)
5. Committee Meeting Video (December 14, 2011)
6. Committee Meeting December 14, 2011, 6 pm Transcript of Excerpt (2:36:07 -2:57:07)
7. Equestrian Village Applications (CD)
8. Committee Members Meeting Materials (December 14, 2011)

9. Sworn Statement of Jeffrey Kurtz dated January 11, 2012 (CD)

- **Applicable Law**

The Following portion of the PBC Commission on Ethics Ordinance establishes jurisdiction in this inquiry:

Sec. 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to any person required to comply with the countywide code of ethics, the county lobbyist registration ordinance, and the county post-employment ordinance, and may further extend to persons or entities required to comply with additional ordinances and regulations duly adopted by other county, local, or municipal government and any commission, bureau, district, or other governmental entity located in Palm Beach County as more fully set forth below. The jurisdiction of the commission on ethics is not exclusive. Any person or entity subject to a complaint to the county's commission on ethics may also be subject to a separate complaint to the state commission on ethics or pursuant to a municipality's ethics ordinance. A finding by the county's commission on ethics is not binding on the state and may not be binding on the municipality, depending on the nature of the complaint and whether the municipality's ethics ordinance is more restrictive than the countywide ethics code.

The following portions of the PBC Code of Ethics ordinance are relevant to this Inquiry:

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care *will result in a special financial benefit*, not shared with similarly situated members of the general public, for any of the following persons or entities [as listed in subsection 1-7]. (Emphasis added)
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for *himself, herself, or others*. For the purposes of this subsection, "*corruptly*" means *done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties*. (Emphasis added)

- **Analysis**

The Complainant (Carol Coleman) in her sworn Complaint, does not allege facts and circumstances that would support a finding that Mr. Kurtz violated the Code of Ethics, based on several factors:

1. The Complainant alleged Mr. Kurtz failed to take appropriate action that would have prevented Dr. Swerdlin from participating in the discussions for the Equestrian Village application in violation of Sec. 2-443(a) *Misuse of public office or employment (1-7)* of the Palm Beach County Code of Ethics. The inquiry revealed that Mr. Kurtz provided clear instructions to Dr. Swerdlin on several occasions about the guidelines established in Sec. 2-443 (c) *Disclosure of voting conflicts* of the Code.
2. Mr. Kurtz discussed with Dr. Swerdlin his conflict of interest concerning the Equestrian Village Project prior to the December 14, 2011 Committee meeting. Mr. Kurtz advised Dr. Swerdlin that he would have to recuse himself from participating in discussions of that project at the meeting, and abstain from voting on the Equestrian Village application before the Committee.

3. On December 13, 2011, Dr. Swerdlin was sent an email communication as directed by Mr. Kurtz, and acknowledged receipt of this email. Attached to the email was a copy of a state Conflict of Interest form, as well as a copy of §2-443(c) of the Code, with the relevant portions underlined for emphasis.
4. On December 14, 2011, at the beginning of the Committee meeting where the Equestrian Village Project was to be discussed, Mr. Kurtz advised the Committee members that if any member had a potential conflict of interest, they must declare the conflict, recuse themselves from participation in the discussions of the project, and abstain from voting on the issue.
5. Subsequently, Mr. Kurtz again admonished Dr. Swerdlin directly regarding his actions in attempting to obtain an informal recommendation by the Committee. He advised that the conflict could not be resolved simply by asking for an informal recommendation. Mr. Kurtz further advised Dr. Swerdlin that his request for an informal poll of Committee members would be considered a formal vote on the matter.
6. Even if the allegations as written are true, the Respondent's acts or failure to act would not constitute a violation of §2-443(a) *Misuse of public office or employment (1-7)* or (b) *Corrupt misuse of official position* of the Code. As the Advisor to the Committee, it is not the responsibility of Mr. Kurtz to determine whether or not a member has a conflict of interest. His duty is to advise members on legal issues that directly affect the Committee and its decisions. Mr. Kurtz does not have the authority, nor does the Code require him, to force a member to abstain from participating or voting on an issue that is being discussed by the Committee. Once the member has been advised by Mr. Kurtz with regards to a possible conflict of interest, the decision to recuse themselves from participation and to abstain from voting becomes that of the individual Committee member.

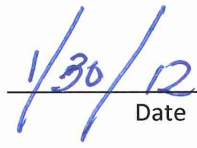
- **Conclusion**

Assuming the allegations by Complainant are true, Mr. Kurtz, as the legal advisor to the Committee has no obligation to act beyond advising members on legal issues that directly affect the Committee and its decisions. He provided Dr. Swerdlin with the appropriated code provisions and admonished him to not participate and abstain. His failure to take additional measures beyond that point does not violate the PBC Code of Ethics. Thus, there is no legal sufficiency to open an investigation into this matter.

Submitted by:



James A. Poag, Investigator
PB County Commission on Ethics



Date

Reviewed by:



(Initials)



Date

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF NO LEGAL SUFFICIENCY

To: Palm Beach County Commission on Ethics
From: James A. Poag, Investigator
Re: C11-028– Respondent: Jeffrey Kurtz-Village of Wellington

- **Recommendation**

Regarding the Complaint against Respondent, Mr. Jeffrey Kurtz, Attorney for the Village of Wellington, COE staff recommends a finding of **NO LEGAL SUFFICIENCY** be entered in complaint number C11-028.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the Complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

This matter came to the attention of the Commission on Ethics' staff via a sworn complaint signed on December 21, 2011 by Ms. Carol Coleman (Complainant). Attached to the sworn complaint form was a letter (Complainant's Statement) addressed to the Palm Beach County Commission on Ethics (COE). The Respondent listed under this Complaint is Mr. Jeffrey Kurtz, Attorney for the Village of Wellington. Respondent is a contract employee of the Village of Wellington and as such, became subject to the jurisdiction of the COE as of June 1, 2011.

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- **Analysis**

Section 2-254 of the Palm Beach County Commission on Ethics Ordinance states in relevant part, "The jurisdiction of the commission on ethics shall extend to any person required to comply with the county code of ethics." Officials and employees of Palm Beach County and local municipalities are within the

jurisdiction of the Code of Ethics. Therefore, the Commission on Ethics does have *personal jurisdiction* over the Respondent.

Evidence shows On December 14, 2011, at the beginning of the Committee meeting where the Equestrian Village Project was to be discussed, Respondent advised the Committee members that if any member had a potential conflict of interest, they must declare the conflict, not participate in the discussion of the project, and abstain from voting on the issue.

Evidence further revealed at a point later in the meeting, Respondent again admonished Dr. Swerdlin directly regarding his actions in attempting to obtain an informal recommendation by the Committee. He advised him that the conflict could not be resolved simply by asking for an informal recommendation. Respondent further advised Dr. Swerdlin that his request for an informal poll of Committee members would be considered a formal vote on the matter.


Despite admonishment by Respondent, Dr. Swerdlin failed to disclose any conflict of interest, continued to chair the Committee meeting as the Equestrian Village Project was discussed, and actively participated in these discussions.

Even if the allegations as written are true, the Respondent's actions or failure to act would not constitute a violation of §2-443 (a) *Misuse of public office or employment (1-7)* or (b) *Corrupt misuse of official position*. As the legal advisor to the Committee, it is not the responsibility of Respondent to determine whether or not a member has a conflict of interest. His duty is to advise members on legal issues that directly affect the Committee and its decisions. Respondent does not have the authority, nor does the Code require him to force a member to not participate or abstain from voting. Once the member had been advised by Respondent with regards to a possible conflict of interest, the decision to not participate and abstain from voting rests with the individual Committee member.

- **Conclusion**

Assuming the allegations by Complainant are true. Mr. Kurtz, as the legal advisor to the Committee, has no obligation to act beyond advising members on legal issues that directly affect the Committee and its decisions. His omission to act beyond that point would not violate the PBC Code of Ethics. Thus, there is **NO LEGAL SUFFICIENCY** to open an investigation into this complaint.

BY:



Alan S. Johnson, Executive Director
Florida bar #223352
Commission on Ethics

01/30/2012
Date