



# Palm Beach County Commission on Ethics

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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

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."*

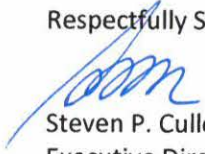
Response: Staff has just completed a comprehensive commissioner training video. This, approximately 8-hour, program includes a comprehensive review of all Ordinances, Rules, Procedures, investigative overview, advisory opinions, quasi-judicial functions, best practices during hearings and the Sunshine 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,



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Palm Beach County Commission on Ethics

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Copies to: COE Website, COE Staff, COE Commissioners