

# Palm Beach County Commission on Ethics

**Commissioners**  
Manuel Farach, Chair  
Robin N. Fiore, Vice Chair  
Ronald E. Harbison  
Daniel T. Galo  
Patricia L. Archer

**Executive Director**  
Alan S. Johnson

In Re: Rafael Abadia

C12-007

## Public Report and Final Order of Dismissal With Letter of Instruction

COMPLAINANT, Alan S. Johnson, Executive Director of the Commission on Ethics, filed the above-referenced COMPLAINT on August 16, 2012, alleging a possible ethics violation involving RESPONDENT Rafael Abadia, Chairman of the Palm Beach County CARE Council

The COMPLAINT alleges that Chairman Abadia misused his position and authority by participating and voting on an issue regarding the allocation of grant funds to a specific Peer Mentoring program for which he intended to apply for employment, as well as participating in the health care provider bid selection process which resulted in a portion of these funds being allocated to his subsequent employer.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a)<sup>1</sup> of the Palm Beach County Code, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. An official may not use his official position in a manner which he knows or should know with the exercise of reasonable care will result in a special financial benefit to him, not shared with similarly situated members of the general public.<sup>2</sup>

On August 16, 2012, the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. The Memorandum of Probable Cause and Memorandum of Inquiry, adopted by reference, were presented to the Commission on Ethics on September 12, 2012 with a recommendation that although there is NO PROBABLE CAUSE to believe there was a code of ethics violation, the facts and circumstances warrant a

<sup>1</sup> Article V, Division 8, section 2-258(a). *Powers and Duties*. The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

(1) Countywide Code of Ethics;  
(2) County Post-employment Ordinance; and  
(3) County Lobbyist Registration Ordinance

<sup>2</sup> Article XIII, §2-443(a) and (c)

DISMISSAL with a LETTER OF INSTRUCTION to the Respondent. At that time, the Commission conducted a hearing. The Commission reviewed and considered the Memorandum of Inquiry and Probable Cause, recommendation of staff, as well as oral statements of the RESPONDENT and ADVOCATE. The Commission also reviewed Article V, Section 2-260.3 of the Commission on Ethics Ordinance.<sup>3</sup> At the conclusion of the hearing the Commission on Ethics determined that there was NO PROBABLE CAUSE to believe that a violation had occurred; however, a LETTER OF INSTRUCTION would be appropriate under the circumstances presented. Based on the facts and circumstances surrounding the alleged violation, the Commission finds that the alleged violation was inadvertent and unintentional and that the public interest would not be served by proceeding further.

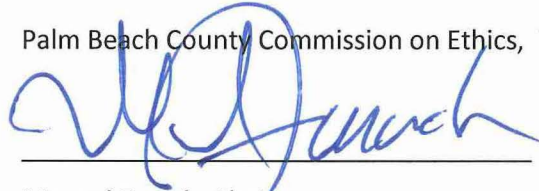
Therefore it is:

**ORDERED AND ADJUDGED THAT** NO PROBABLE CAUSE exists, and the COMPLAINT against RESPONDENT, Rafael Abadia, is hereby DISMISSED and a LETTER OF INSTRUCTION is to be issued in this case.

**DONE AND ORDERED** by the Palm Beach County Commission on Ethics in public session on September 12, 2012.

Palm Beach County Commission on Ethics,

By:



Manuel Farach, Chair

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<sup>3</sup> Sec. 2-260.3. Dismissal of Complaints

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal.





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## Letter of Instruction

This matter came to the attention of the Commission on Ethics (COE) staff through an anonymous email dated April 23, 2012. The email stated that Respondent had improperly voted on an issue for which he financially benefitted.

- **Facts**

Respondent is the Chairperson of the Comprehensive AIDS Resources Emergency Care Council (CARE Council), an advisory board to the Palm Beach County Board of County Commissioners (BCC), and the Priorities and Allocations Committee of the Care Council (PAC).

The CARE Council is responsible to “plan, develop, monitor, develop, monitor, evaluate and advocate for a medical and support services system for individuals and families affected by HIV/AIDS.”<sup>1</sup> In this mission, they are responsible for the general allocation of funding for local health care services; specifically from the Ryan White CARE Act, a grant funding source for persons who are HIV positive, or have contracted AIDS. The Palm Beach County Board of County Commissioners (BCC) is the recipient organization for this grant. As an advisory committee, the CARE Council presents its budget recommendations as to general service areas to the BCC, who, with input from county staff, then make the final decision on the allocation of all grant funding for these HIV/AIDS services.

Respondent participated and voted on a budget allocation recommendation on November 15, 2011, which included a specific allocation for a “Peer Mentoring Program.” HIV/AIDS service providers are a very small and specific group; therefore, many of the same agencies bid for funds to provide these services. After the approval of the recommended budget by the BCC, Respondent participated in rating bid proposers for the Peer Mentoring portion of the award. The ultimate decision of award was made by County Staff, with input from the PAC, including Respondent. At the time, it was Respondent’s intention to apply as a Peer Mentor, regardless of which providers obtained the Peer Mentor Services contract. The Palm Beach County Health Department (Health Department) was one of four (4) applicants for funds to provide Peer Mentoring services. Two were awarded contracts. Of the \$250,000 of funding available for this program under the approved budget, \$41,500 was awarded to the Health

<sup>1</sup> Palm Beach County CARE Council organizational bylaws.

Department. On February 17, 2012, Respondent was hired by the Health Department as a Peer Mentor under this program.

At the time of his participation, Respondent had been advised regarding his duties and requirements under state law, which permits voting on an issue where a financial benefit is not direct and immediate, but realized only by an intervening contingency. While the Palm Beach County Code of Ethics is more stringent than state law, this issue has not previously been addressed by the COE.

Ultimately, the Health Department was unable to find additional qualified Peer Mentors and the specific grant funds recommended by the CARE Council and allocated by the BCC were not used to fund Respondent's specific position.

- **Holding**

Sec. 2-443(a). *Misuse of public office or employment*, states in relevant part:

- (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: (Emphasis added)
  - (1) Himself or herself;
  
- (c) *Disclosure of voting conflicts.* County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other 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, as set forth in subsections (a)(1) through (7).

Sec. 2-260.3. *Dismissal of complaints*, states as follows:

Notwithstanding any other provisions of this division, the commission on ethics may, at its discretion: (a) dismiss any complaint at any state of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any state of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the commission

on ethics dismisses a complaint as provided in this subsection, the commission on ethics shall issue a public report stating with particularity its reasons for the dismissal.

Respondent did participate and vote on a matter that contained a specific budget recommendation of a Peer Mentoring program for which he intended to apply for employment. In addition, he participated in the RFP process for the selection of a provider for whom he subsequently was hired as a Peer Mentor. However, the facts obtained during the inquiry indicate that Respondent was under the mistaken belief, based on advice from Assistant County Attorney, that he was permitted to participate in the budget recommendation for allocation of grant funds as well as the selection process for providers (RFP) for specific programs provided he did not have a current financial relationship with the program or provider. According to the Assistant County Attorney, general budget approvals are seen under State law as too remote and speculative with regard to a possible financial benefit where there is no current financial relationship between the official and potential vendors or service providers. Notwithstanding, the vote taken by the CARE Council involved a specific program from which Respondent intended to benefit, and further, Respondent participated in an RFP process involving a vendor for which he intended to apply, and did apply for employment.

In light of the facts and circumstances known to the Commission on Ethics, the matter is disposed of by way of Dismissal with this Letter on Instruction. The COE believes that the public interest would not be served by proceeding further. However, Respondent is now advised that the filing of Ethic Complaint C12-009, along with this Letter of Instruction, is to serve as notice that actions taken by Respondent in participating and voting on a recommendation for a specific program when he intended to apply for future employment in that program, along with his participation in the RFP process in an advisory capacity, creates an appearance that he is attempting to obtain a special benefit based upon his official position. As an official, he may not participate in matters that he knows, or should know with the exercise of reasonable care, will result in a special financial benefit. When faces with such a scenario as a member of an advisory board, he must disclose the conflict, abstain from voting, not participate in the discussion and file a conflict of interest form, 8B, as required by the Code. Respondent is instructed to be more careful in the future to ensure that he conforms his activities to this Letter of Instruction and to the requirements of §2-443(a) and (c) to avoid any future enforcement action.

This letter of instruction is issued by the Palm Beach County Commission on Ethics in public session on September 12, 2012.

By:



Manuel Farach, Chair