



# Palm Beach County Commission on Ethics

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

**Executive Director**  
Steven P. Cullen

In Re: Mayor Robert Margolis

C13-001

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## ORDER SETTING CASE FOR FINAL HEARING AND SETTING FORTH PRE-HEARING MATTERS TO BE COMPLETED

Pursuant to Notice served upon the Respondent and Advocate and in accordance with Art. V, Div. 8, Section 2-260 of the Commission on Ethics Ordinance, a pre-hearing case management conference was held before the Chairman of the Commission on Ethics (COE) on June 6, 2013, and as a result thereof, it is hereby;

**ORDERED** as follows:

1. **FAMILIARITY WITH THIS ORDER.** The parties and counsel shall read this order, be familiar with its contents and comply with its requirements.
2. **FINAL HEARING.** This proceeding is set for **Final Hearing** on the following dates and times: August 8-10, 2013, from 8:30 a.m. to 5:00 p.m. and August 12, 2013 from 8:30 a.m. to 5:00 p.m., in the Board of County Commission Chambers, Palm Beach County Governmental Center, 6<sup>th</sup> Floor, 301 North Olive Avenue, West Palm Beach, FL. The Final Hearing will be conducted by (the entire Commission OR a panel of 3 Commissioners designated by the Chairperson). The length of time estimated for the **Final Hearing** is one day; however, additional days have been scheduled and will only be used if necessary to complete this matter. The **Final Hearing** will be evidentiary so all parties are directed to prepare their evidence and witnesses and bring their proofs and otherwise be prepared by the Final Hearing.

The rules to be followed at the Final Hearing, pursuant to §2-260.1(b)(4) relating to evidence and witnesses, is as follows: *The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient itself to support a finding. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The commission on ethics shall not allow the introduction into evidence of an affidavit of a person when that person can be called to testify; this shall not preclude the admission of a deposition of such a person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.*

2. **FINAL PRE-HEARING CONFERENCE.** A final pre-hearing case management conference shall be conducted **on August 1, 2013 at 12:00 Noon**, in the Board of County Commission Chambers, Palm Beach County Governmental Center, 12<sup>th</sup> Floor, 301 North Olive Avenue, West Palm Beach, FL.

3. **EXCHANGE OF WITNESS LISTS AND EVIDENCE SCHEDULES.** On or before **July 19, 2013**, the parties shall serve upon each other the following:

(a) **LIST OF ALL WITNESSES** (including known impeachment and rebuttal witnesses) shall be served on the opposing party, but not filed with **COE**, of all witnesses which each party in good faith may call at the **Final Hearing**. The list shall contain the name, address and telephone number of the witness, and subject matter of their expected testimony at the **Final Hearing**. Additionally, expert witnesses shall be designated as such.

(b) **SCHEDULE OF EXHIBITS.** An initial schedule of exhibits shall be served on the opposing party, of all exhibits which a party may offer at **Final Hearing** numbered sequentially. A final schedule of exhibits shall be served no later than July 26, 2013.

4. **FINAL WITNESS LIST.** Pursuant to §2-260(m) the final witness list may not be amended within ten (10) days of the Final Hearing unless good cause is shown. Failure to disclose the name and address of a witness may result in the exclusion of the witness' testimony according to the rule applied in civil judicial proceedings.

5. **REQUIREMENTS PRIOR TO FINAL HEARING/ FINAL PREHEARING CONFERENCE(S).**

(a) **MEETING OF ATTORNEYS.** Not later than **August 1, 2013**, counsel who will try the case (and any pro se parties if applicable) shall meet with the Chairperson, or a member of the COE designated by the Chairperson, to conduct a final prehearing conference pursuant to §2-260(l). Attendance at this conference is mandatory. The purpose of this conference is as follows:

1. To hear argument on pending motions.
2. To clarify and simplify issues and to resolve other procedural matters.
3. To discuss the possibility of settlement of the issues.
4. To examine exhibits and documents for the purpose of determining joint exhibits, exhibits and documents admitted without objection and those to which objection will be made and the grounds of each objection.
5. To discuss stipulations as to uncontested matters.
6. To exchange final witness lists.
7. To discuss and attempt to agree upon any other matters which will lead to a more orderly and expeditious Final Hearing.
8. To prepare a joint exhibit binder containing all exhibits to be used at the Final Hearing, both for the Advocate and Respondent. The joint exhibit binder shall be indexed according to the attached form Exhibit List.

6. **NON-DISPOSITIVE MOTIONS.** Pursuant to §2-260(k), the Chairperson (or commission designee) alone shall hear and rule on all non-dispositive motions. The Chairperson or commission designee may rule upon a motion without holding a hearing in the

matter. A dispositive motion, such as a motion to dismiss, must be heard and ruled upon by the COE.

7. **DEPOSITIONS AND DISCOVERY.**

(a) Pursuant to §2-260(i) & (h), the procedure for taking depositions shall be as follows:

1. To the extent permitted by law, the Chairperson or commission designee may issue subpoenas to effect discovery upon the written request of Respondent or Advocate
2. The requesting person shall give the name and address of each witness he or she wishes to have deposed and shall describe with particularity those documents or other items that the person wishes to have the witness produce pursuant to a subpoena *duces tecum*.
3. The Chairperson or commission designee may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.
4. If either party requires the issuance of a subpoena for the **Final Hearing** or discovery, **the COE** will provide the appropriate forms upon request. Such requests should be made as soon as possible, as the forms need to be completed by the requesting party and, upon approval, will be promptly issued by the Chairperson or commission designee. It will be the requesting party's responsibility to have the subpoenas served in accordance with applicable law.

(b) **All discovery matters shall close at 5:00 p.m., July 29, 2013, unless extended by an Order for good cause shown. "Close" means all depositions are completed and subpoenas and requests to produce are served before the closure date.**

8. **MOTIONS CUT-OFF DEADLINE.**

(a) All dispositive motions, including any motion to dismiss, must be filed and served on or before **July 22, 2013**. All dispositive motions shall be governed by applicable Florida Rules of Civil Procedure and shall be heard by the COE on **August 8, at 8:30 a.m.** at the commencement of the final hearing scheduled in the Board of County Commission Chambers,

Palm Beach County Governmental Center, 6<sup>th</sup> Floor, 301 North Olive Avenue, West Palm Beach, FL.

(b) All non-dispositive motions directed to the conduct of the Final Hearing, for which grounds then exist, must be filed and served on or before **August 1, 2013**. If time permits, any such motion may be heard at the final pre-hearing conference or may be heard at the commencement of the Final Hearing.

9. **INCONSISTENCY WITH PRIOR ORDER.** If there are any provisions of this order which are inconsistent with any other orders entered on specific topics, the latter order will govern.

10. **MODIFICATION OF ORDER FOR GOOD CAUSE.** The provisions of this order, including any time limits, witness list and evidence schedules attached to it may be modified by a subsequent order based upon a motion showing good cause.

**DONE AND ORDERED** this 6<sup>th</sup> day of June, 2013.



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Manuel Farach, Chair  
Palm Beach County Commission on Ethics

Copies Furnished:

Megan C. Rogers and John B. Cleary, Advocates  
Mark Herron and J. Brennan Donnelly, Attorneys for the Respondent