

MEETING: PALM BEACH COUNTY COMMISSION ON ETHICS

I. **CALL TO ORDER:** December 2, 2010, at 4:03 p.m., in the Commission Chambers, 6th Floor, Governmental Center, West Palm Beach, Florida.

II. ROLL CALL

MEMBERS:

Judge Edward Rodgers, Chair
Manuel Farach, Esq., Vice Chair
Dr. Robin Fiore
Ronald Harbison
Bruce Reinhart, Esq.

STAFF:

Alan S. Johnson, Esq., Commission on Ethics (COE) Executive Director
Mark Bannon, COE Investigator
Benjamin Evans, COE Intern
Sydone Thompson, Deputy Clerk

III. INTRODUCTORY REMARKS

Judge Edward Rodgers reminded everyone to either turn off or silence their cell phones. He stated that copies of the meeting's agenda were available at the podium. He said that public comments would be heard as noted in agenda item IX, and asked that public speakers observe the time limits when giving their statements. He added that if additional time was needed by a public commentator, the COE would try to make special accommodations.

IV. APPROVAL OF MINUTES FROM NOVEMBER 4, 2010

Dr. Robin Fiore requested that page 14, fourth bullet, second sentence of the November 4, 2010, minutes be amended to read:

If Ms. Mathews wins her personnel grievance because the County's policy was unclear, that did not affect the commission's determination that Commissioner Taylor had not violated the Code.

MOTION to approve the minutes of November 4, 2010, with the amendment made by Dr. Robin Fiore. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 5-0.

V. PROCESSED ADVISORY OPINIONS

Alan Johnson, Commission on Ethics (COE) Executive Director (ED) stated that:

- At the last COE meeting on November 4, 2010, the committee instituted a consent agenda process for advisory opinions (AO) that were answered directly by the Code of Ethics (Code).
- Three processed advisory opinion letters, V.a. RQO 10-033-OE, V.b. RQO 10-034, and V.c. RQO 10-037-OE, were previously reviewed by the chair and processed. Unless the COE requested that one of the AO letters be pulled for discussion, item V. could be approved in one vote.

MOTION to approve accepting consent agenda item V. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

VI. PROPOSED ADVISORY OPINIONS

VI.a. Request for Opinion (RQO) 10-032

Mr. Johnson stated that:

- In response to request RQO 10-032 from Palm Beach County Emergency Management Director Bill Johnson regarding travel reimbursements, staff recommended that the criteria for exempt travel reimbursements include:
 - travel on behalf of the County in performance of official duties;
 - payments by another governmental entity or organization of which the County was a member, where the travel was related to that official duty; and,
 - Listing the Federal Emergency Management Agency (FEMA) and the Florida Division of Emergency Management (FDEM) as governmental entities.
- Reimbursements could not be accepted from any County contractor, vendor, service provider, bidder, or proposer, without a waiver.

VI.a. – CONTINUED

- Notwithstanding any waivers, no reimbursement from a lobbyist or principal for more than \$100 could be accepted unless the reimbursement related to the official duties of the employee, and were on behalf of the County. Otherwise, the gift would constitute an exception to the gift law.
- Gifts of more than \$100 were reportable if they were not related to official duties on behalf of the County; and were allowable if they were not received from a lobbyist or principal party.
- A reimbursement could be considered a gift.
- Based on the facts presented, COE direction was sought for future AO relating to reimbursements. The AO response issued to Mr. Johnson for RQO 10-032 stated that:

Since your questions were general in nature, and involved future speculative acts and circumstances based upon past events, the commission cannot opine other than to offer general guidelines under the Code.

- A general AO response could have been drafted regarding RQO 10-032 without identifying the originating County department that made the request. However, for illustrative purposes, the parties were identified for future AO reference.

Manuel Farach suggested that language in section 2-444(e)(1) relating to Exceptions be modified. He said that any reimbursement by someone other than the County could be considered a gift. The language in the Code referenced by Mr. Farach stated:

As previously indicated, any reimbursement that is not specifically related to the performance of your official duties for use solely by the County in conducting its official business, would be considered a gift and subject to the prohibitions and reporting requirements as set forth in the Code.

VI.a. – CONTINUED

Mr. Johnson stated that:

- Direction was needed to modify the language in section 2-444(e)(1) of the Code which stated, “As previously indicated, any reimbursement by an outside entity, vendor, provider, bidder or proposer...” as the rule could be applied to FEMA and FDEM.
- The two presenting issues as related to the Code were reimbursements and prohibitions against reimbursements. Mr. Johnson explained that:
 - Any work-related reimbursement received from a governmental entity would not be considered a gift, and would be excluded as a gift.
 - Any gift received, including those received from a lobbyist in solicitation and performance of official duties, would not be considered a gift.
 - Any other reimbursement would constitute a gift, and would either be prohibited, if received from a lobbyist and more than \$100 was reportable.
- The proposed modifications could both be tabled and discussed at a later meeting, or the COE could resolve the matter and vote on the proposed language modifications at today’s meeting.

Mr. Farach suggested that RQO 10-032 be placed on the consent agenda for the next COE meeting.

MOTION to approve accepting that the Commission on Ethics table item VI. RQO 10-032 until the next meeting on January 6, 2011, and revise the language in the advisory opinion. Motion by Ronald Harbison, seconded by Bruce Reinhart, and carried 5-0.

VII. WORKSHOP ITEMS

(CLERK'S NOTE: Mr. Johnson gave a PowerPoint presentation at this time and asked that the COE reserve their questions until the end of the presentation.)

VII.a. Processing Complaints (P/C and Final Hearings)

Mr. Johnson said that:

- Public records and Florida Sunshine Law (Sunshine Law) exemptions were established by Florida State statutes (F.S.S.). The COE adopted only State statutes that specifically applied to local State ethics commissions.
- The COE was a tribunal that functioned in a quasi-judicial capacity for complaint cases. It was explained that:
 - The respondent was the only party to the case, and the accused party was entitled to due process rights. The advocate's role was similar to that of a prosecutor.
 - The Code and the State statutes stipulated that the complainant was not permitted to attend the probable-cause hearing.
 - The complainant was permitted to attend the final hearing and address the tribunal as a witness for the respondent or the advocate.
 - The complainant could, in a public forum, make statements regarding a complaint case once a final determination was made by the COE.
- The purpose of today's workshop was to educate the public and the COE about the probable-cause hearing process.
- With respect to legal sufficiency, the ED was required to divulge information from sworn complaints to the COE.
- The probable-cause process was open to the public. The release of information was delayed so that the respondent could be protected until sufficient trustworthy facts were confirmed.

VII.a. – CONTINUED

- Public Records Exemption, section 2-230(f), Rule 3.3, of the Code stipulated that members of the press raised concerns that the probable-cause process was not transparent because the entire process was not open to the public.
- The procedural statute that extended State COE rules to local commissions was F.S.S. 112.324. Mr. Johnson explained that:
 - F.S.S. 112.324, section (2)(a) addressed public records, and differed from the County's Code, which stipulated that the complaint was publicized, but records obtained during the investigative process was not publicized.
 - Mr. Johnson suggested that at a later meeting, the COE could address the differences in the language of the County's Code versus the language in the State's statute.
 - F.S.S. 112.324, section (2)(b) addressed the Sunshine Law, the COE executive session, the case determination process, and the release of case-related documents to the public.
 - F.S.S. 112.324, section (2)(c) incorporated section (2)(a) and section (2)(b) of the State statute and explained that records would either be released at the request of the respondent or upon a probable-cause determination by the COE.
 - A probable-cause hearing could result in a complaint being dismissed, or a finding of probable cause could be substantiated. The COE could also instruct ED staff to conduct further investigations on existing complaints.
- Concerning the COE Rules of Procedure, Rule 4.2(e) adopted F.S.S. 112.324 and stipulated that the COE would hold an executive session during the probable-cause hearing. It was explained that:
 - If legal sufficiency was unsubstantiated, the complaint would not be brought before the COE. A recommendation of dismissal would then be made by the ED.

VII.a. – CONTINUED

- If legal sufficiency was substantiated, then the ED would assign an advocate to litigate the case.
- The ED had retained 15 volunteer advocates who were former public defenders and assistant state attorneys. One advocate would be assigned to each probable-cause complaint from the investigatory phase to its conclusion.
- No written protocol currently existed for the advocate selection process. The current 15 volunteer advocates were seasoned attorneys with at least eight years' experience who were now in private practice.
- In the future, advocates would be matched to cases according to their expertise. Conflict of interest subject matter was also incorporated into the advocate training process.
- Rule 4.3 of the Code stipulated that the advocate would review the investigator's report and make written recommendations. If the advocate requested a public hearing, he or she would be required to make a recommendation and provide a statement of charges.
- Concerning Probable-Cause Determinations:
 - Rule 5.1 stipulated that the advocate's recommendation would be provided to the respondent no less than 10 days before the probable-cause hearing. The respondent would then be given an opportunity to respond to the allegations.
 - Rule 5.3 required that within 10 days of the probable-cause hearing, the respondent should be notified of his or her right to attend the hearing.
 - Rule 5.4 stipulated that the probable-cause hearing was not subject to the Sunshine Law. The participants in the probable-cause hearing were the respondent, advocate, investigator, COE, ED, and the minutes clerk. Evidentiary documents would also be examined during that session.

VII.a. – CONTINUED

- Rule 5.5 stipulated that the respondent and advocate would be permitted to make a brief oral presentation. As in a prosecution, the advocate would be the first party to speak because he or she had the legal burden of presenting trustworthy facts.
- Rule 5.6 correlated with section 2-260(c) of the Code and stipulated that the purpose of the hearing was to determine whether probable cause existed.
- During the probable-cause process, the COE could request that further investigation be conducted on a complaint or continue the hearing, at which no information would be released to the public.
- The COE could either determine that no probable cause existed, that the case be dismissed or settled, or that a letter of advice be issued on the matter. All case information would become public once the determination on the complaint was made by the Code.
- Concerning Findings of Probable Cause:
 - Rule 5.8 stipulated that upon written request by the respondent, a probable-cause hearing would be held within 30 days unless a good cause request to extend the hearing date was made. The COE could also decide to schedule the final hearing.
 - Rule 5.9 stipulated that the final hearing must be held within 30-to-90 days of the probable-cause determination unless the hearing date was extended for good cause.
 - In order to expedite the probable-cause process:
 - the chairman or his designee would review the discovery items;
 - a COE designee, could, in lieu of the entire commission, be appointed to facilitate the public hearing, file motions, hear depositions, and review witness lists;

VII.a. – CONTINUED

- the advocate could file a motion to dismiss the case at any time during the process; and,
 - The COE was the final arbiter on all hearings.
- Concerning Public Hearings:
 - Once additional municipalities conceded to the COE's jurisdiction, a three-member COE panel would be created in lieu of the entire commission, and at the designation of the chairman, to adjudicate public hearings.
 - Rule 6.2 explained the process by which the facts of the statutes and the Code were tracked.
 - Concerning Public Hearing Procedures:
 - The advocate was the first party to present an argument, followed by the respondent. Rebuttal would be permitted only at the COE's discretion.
 - Opening and closing statements could be made by the respondent, but the complainant's witness would not be permitted to speak.
 - Section 2-260.1(3) of the Code explained the rights of the respondent and advocate during the public hearing. Hearsay would be allowed, but could not be used by the tribunal as the basis for the final decision.
 - The COE had the authority to regulate the hearing process and ensure that the hearing was not prolonged due to the presentation of redundant information.
 - Concerning dismissals made during the hearing process, the COE had the ability to dismiss a case, issue a letter of advice, or issue a letter of instruction to the respondent instead of proceeding to a final hearing.

VII.a. – CONTINUED

- Concerning Public Order Imposing Penalties:
 - As per the rules of the Code, the COE determined the penalty to be imposed.
 - The final order must be issued within 12 months of the complaint, although good-cause extensions could be issued. The final order could also be postponed until a restitution hearing was held.
 - The final order stipulated the imposed penalty, and a determination of “intentional” or “unintentional” was made at the case’s conclusion.
- Respondents had a right to settle a case that was brought against them, but the settlement could be ratified only by the COE.
- Concerning appeals:
 - Once the final order was issued by the COE, the respondent had 30 days in which to file an appeal with the Florida Circuit Court (Circuit Court).
 - Rules in the Code governed the respondent’s financial capability to pay hearing costs. The COE was exempt from such fees.
 - The COE could, at its discretion, suspend a final order. The Circuit Court could overturn a COE decision on appeal.

Judge Rodgers recommended that the COE establish rules of procedure for the hearing process and append a provision in which advocates could be recused from a case due to issues of conflict of interest. Ronald Harbison stated that Judge Rodgers had a valid point.

Mr. Johnson stated that:

- Section three of the COE’s Rules of Procedure was the general rule that addressed complaints.

VII.a. – CONTINUED

- A template for the recusal of an advocate from a case could be drafted for COE review.
- A respondent could exercise due-process rights on a probable-cause hearing and request that an advocate be replaced on a probable-cause hearing.
- General rules for advocates could also be developed.
- Amendments to the rules and procedures section of the Code could be provided to each COE member for review prior to the next meeting in January 2011.

Mr. Farach said that an agreement could be incorporated into the rules and procedures section of the Code so that each advocate could be bound by the Florida Bar Association's (Bar) rules of discipline. He said that by applying those standards, instances of conflict of interest or appearances of impropriety could be averted.

Mr. Johnson stated that he agreed with Mr. Farach's proposal and added that:

- The advocates could be notified that the COE had adopted the Bar's conflict rules.
- The Web site for the Bar's rules would be provided to the COE members via email.
- The public release of complaints would be discussed at the next COE meeting in January 2011.
- Changes to the Code would not be instituted until the ordinance drafting committee (drafting committee) completed the vetting process.

Mr. Farach said it was concerning that the COE had been used by opponents during the election process to politically attack sitting County commissioners. He said that this could be a greater issue once the remaining 36 municipalities conceded to the COE's jurisdiction. He expressed the opinion that the reputation and work of the commission could be quickly tarnished by fabricated allegations made during the election process.

VII.a. – CONTINUED

Dr. Fiore asked for an explanation as to why the Code was written in its current format as opposed to the State's format.

Mr. Johnson said that before the next COE meeting, he would confer with Assistant County Attorney Leonard Berger for clarity on the matter because Mr. Berger was the prime author of the Code.

VII.b. Press Releases/Releasing Documents to the Press

Mr. Johnson stated that press releases were made when COE Investigator Mark Bannon was hired, and when the advocates were trained at the Legal Aid Society.

Mr. Farach stated that he favored the release of information to the press even if it had been published on the ED's Web site.

Mr. Johnson explained that:

- The issue was the appropriateness of releasing information to the press, such as circumstances surrounding a complaint's dismissal.
- If the COE entered into an executive session and determined that there was no legal sufficiency on a case, the COE could then indicate whether such information should be formulated into a press release.

Mr. Farach reiterated that he agreed with the issuance of press releases, and Bruce Reinhart concurred.

Mr. Reinhart stated that:

- All COE-related information should be released. Otherwise, it would appear that the commission prioritized certain decisions over others.
- Another issue was whether the information was being distributed fairly.

VII.b. – CONTINUED

- A synopsis with the following format could be issued after each COE meeting:
 - Introductory language such as, “On Thursday, November 2, 2010, the COE met and took the following actions...” ; and,
 - Bulleted notes and a disclaimer that additional information was forthcoming and could be accessed from the COE’s Web site.

Dr. Fiore cited her agreement with Mr. Reinhart’s suggestion. She asked whether the public could subscribe to a COE mailing list in order to receive press releases.

Mr. Johnson communicated that currently he did not have a mailing list or email subscription in place for press releases, but that he would explore its formulation.

Judge Rodgers stated that there should be some distinction made between editorialized releases and factual information.

Mr. Johnson explained that staff could draft a synopsis of COE meetings after its completion.

Judge Rodgers recommended that a press release procedure be formulated and that a designee be assigned to answer any public inquiries pertaining to such releases.

Mr. Harbison suggested that rules be developed regarding ex-parte communication.

Mr. Johnson stated that the Rules of Procedure section of the Code contained the provision that if a COE member were contacted directly regarding a complaint or case, that commission member could be required to recuse himself or herself.

Mr. Reinhart suggested that a rule or procedure be established to address instances when members of the public inquired of COE members about commission-related matters outside of COE meetings.

VII.b. – CONTINUED

Mr. Johnson explained that:

- In the public hearing process, the final determination would be publicized, in contrast with the probable-cause hearing where an executive session would be held. Once the case was either dismissed or a finding of probable cause was made, the case information and minutes would then be released to the public.
- Judges were prohibited from being contacted directly during the course of ongoing litigation. It was unclear whether similar rules existed that would prohibit an individual from making face-to-face contact with a judge in a public forum after a decision was rendered on a case.

Mr. Reinhart suggested that when approached, COE members could inform members of the public that they were precluded from discussing COE decisions outside of commission meetings.

Mr. Farach said that:

- A prohibitive rule should not be created, but he did agree with the intent of such a rule.
- As a part of the public process, commissioners should be allowed to voice disagreements freely about opinions or decisions made by fellow commissioners.
- He would volunteer to abide by the proposed rule, but he was uncomfortable with the imposition of such a rule on the entire commission.

Mr. Johnson suggested that the COE consider the issue further and decide whether the matter should be placed on a future COE meeting agenda.

Dr. Fiore stated that while it was understandable that members of the public would attempt to pose questions to commissioners outside of meetings, some commission members had been followed to the parking lot after meetings and that harassment was unwelcomed.

VII.b. – CONTINUED

Mr. Farach said that:

- Since the commission operated in a quasi-judicial capacity, the ED could request that Mr. Berger clarify the methods of contact that were permitted with COE members prior to adjudicatory hearings.
- Florida Supreme Court decision *Schneider*, which set forth ex-parte contacts in County or City commissions could apply to the COE in this instance.

Mr. Johnson explained that in response to public inquiries, the commission could choose to engage and discuss, remove themselves from such situations, or to refer inquiries to the ED.

Mr. Reinhart suggested that the COE discuss methods and forms of public information dissemination. He stated that in light of the social media market, the commission could consider whether to open a Twitter or Facebook account.

In response to Dr. Fiore's inquiry Mr. Johnson said that:

- In public hearings, the respondent may or may not be represented by an attorney. The respondent's attorney would work with the COE advocate, but not the COE.
- Language in the complaint form notified the complainant not to contact the COE directly, but no such language existed on the form for the respondent's form. Customarily, a cover letter was sent to the respondent informing them of the complaint. The language in the ED's cover letter could be modified to inform litigants that direct contact with COE members was prohibited, and that any inquiries had to be relayed to ED staff only.
- Rule 5.4 of the Code referred to the respondent as an "alleged violator." The language "alleged violator" could be stricken and replaced with the language, "respondent requests in writing that said proceeding be public."

MOTION to approve amending Rule 5.4 of the Code with the proposed changes made by Alan Johnson. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

VII.b. – CONTINUED

Mr. Johnson proposed that Rule 5.4(1) be amended and that language be added to reflect that for probable-cause hearings, the COE would adjourn the public meeting and reconvene in an executive session.

MOTION to approve amending Rule 5.4(1) to the Rules of Procedure with the changes proposed by Alan Johnson. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

Mr. Farach stated that in its current form, Rule 5.4(1) was drafted with the assumption that the complaint and hearing were publicized, but that under the State ethics commission rules, the complaint would not be made public. He asked how the matter would be treated if a private complaint were made.

Mr. Johnson explained that:

- Rule 5.4(1) stipulated that investigative findings and information contained in the complaint was confidential and exempt.
- At the next COE meeting, the commission could include the complaint's details as non-disclosed, but the Rule of Procedure would not change. The section of the Rule pertaining to publicizing the complaint could also be modified.

Mr. Farach suggested striking the language in Rule 5.4(1), "Upon receipt," and replacing it with, "When called upon to make a probable-cause determination of a legally sufficient complaint."

Mr. Johnson stated that in a previous processed complaint, the respondent agreed in writing to publicize the details of the complaint. Rule 5.4(1) would not have applied in that instance, he said.

AMENDED MOTION to approve accepting the language in Rule 5.4(1) as proposed by Manuel Farach. Motion by Dr. Robin Fiore, seconded by Bruce Reinhart, and carried 5-0.

VII.c. Consideration of Code Revision to 2-443(a) *Misuse of Public Office or Employment*

Mr. Johnson stated that:

- During the COE meeting of November 4, 2010, the committee tabled the discussion until the full complement of the commission could be present at today's meeting.
- Currently, prohibitions against misuse of public office in the Code, if not financial in nature, did not constitute a Code violation.
- The prosecution of former Commissioner Jeff Koons would not have violated the Code because it was not financially motivated. In another incident a North Florida commissioner involved in an automobile accident told the other motorist that he, "owned the police." Although no financial misuse existed, the actions of both officials constituted corrupt intent. Therefore, the definition of "corruptly" should be added to the Code for non-financial violations.
- Staff recommended that the language in Article 13, Section 2-443(a) of the Code relating to the misuse of public office or employment be revised to state, "or to corruptly secure, or attempt to secure a special privilege, benefit, or exemption."
- Upon COE approval, the proposed language modification would be recommended to the drafting committee that reported to the board.
- Based on the cases litigated in the Florida Appellate Court, the use of the word "corruptly" underscored intent.

Mr. Reinhart said that the drafting committee's legal counsel would likely wordsmith the Code if warranted. He added that conceptually, he supported the ED's recommendation.

MOTION to approve accepting the proposed changes in Section 2-443(a) of the Code, as indicated by Alan Johnson. Motion by Manuel Farach, seconded by Ronald Harbison, and carried 5-0.

VII.d. Definition of Lobbyist

Mr. Johnson stated that:

- In the advisory opinion RQO 10-030, Rachel Ondrus, Executive Director of the County legislative delegation, attempted to rent an apartment from a woman whose husband was a lobbyist for the State legislature.
- The Code defined lobbyist, but not lobbying. Staff recommended that lobbying be taken in the context of, "lobbying one's department, or government." Otherwise, the Code's language would be inconsistent.

Dr. Fiore said that she did not agree with the proposed language change and would not vote for it.

Mr. Johnson explained that:

- The COE did not have the authority to revise the proposed language change.
- The lobbyist registration ordinance defined lobbying as, "any County government, entity, or department." No definition of lobbying existed in the Code that applied chiefly to the \$100 gift law limitation.
- Inconsistencies in the language of the advisory board section of the Code defined lobbyist as anyone who lobbied an advisory board or any department under an advisory board's authority.

Dr. Fiore commented that elected officials, subject to term limits could use their positions to secure future elected offices. She said that it would not matter who lobbied them now, because there was a narrow horizon for how corruption was perceived.

VII.d. – CONTINUED

Mr. Reinhart said that:

- Although Dr. Fiore made some valid points, the issue was a fairly complex policy decision that could generate contrasting points.
- Unless there existed a strong sense of unanimity within the commission, the drafting committee could consider the recommendations made by the COE. It was suggested that the COE not make a recommendation on this issue.

Mr. Johnson stated that since he would be representing the COE on the drafting committee, he was uncomfortable voicing an opinion regarding the lobbyist definition.

Dr. Fiore suggested that Mr. Johnson convey to the drafting committee that while the COE could not reach a consensus, it had a range of views on the matter.

Mr. Reinhart proposed that:

- Since the drafting committee's process would be ongoing and COE members debated rigorously on the definition of a lobbyist, the commission could call a meeting in an attempt to reach a consensus.
- In the capacity of ED, and absent specific direction from the COE, Mr. Johnson should not take a position on the matter.

Mr. Johnson reiterated that although he would not make opinions on such matters he supported the COE's attempts to reach a consensus.

VII.e. UNSCHEDULED ITEM

DISCUSSED: Board of County Commissioners Waivers.

Mr. Reinhart said that the November 4, 2010, minutes reported that the commission had tabled the issue of waivers. He inquired whether the issue of waivers was ripe for discussion at today's meeting or at a future COE meeting, because it was not added to today's agenda.

VII.e. – CONTINUED

Mr. Johnson stated that the item was inadvertently omitted from today's meeting agenda because it was his understanding that the issue of waivers had been resolved. He said that the item would be brought back to the COE once the drafting committee started the vetting process, but that it could also be discussed at the January 6, 2011, COE meeting. The board conceded to the ED's proposal.

VIII. EXECUTIVE DIRECTOR COMPENSATION DISCUSSION – (COMMISSIONER REINHART)

Mr. Reinhart stated that:

- Mr. Johnson was asked to add item VIII. to today's agenda because in the capacity of ED, he was not allowed to add the item to the agenda. The COE also needed to discuss Mr. Johnson's performance evaluation and whether it was appropriate and economically feasible to reconsider his salary at this time.
- When Mr. Johnson accepted the ED position, he agreed to accept a salary less than his previous salary. In the next four months, Mr. Johnson's work on the drafting committee would add another facet to his responsibilities.
- Mr. Johnson was asked to collect data on comparable salaries to the ED's job descriptions, or positions within County government that were analogous to the ED's position.

Assistant County Administrator Brad Merriman stated that Mr. Johnson had asked the County's human resources department (HR) to assist in developing a nationwide salary survey for the ED position. He said that the survey had been provided to the COE at today's meeting.

Dr. Fiore stated that:

- She recalled that, the COE's initial discussions during the ED recruiting process revealed that the position was best suited for an attorney. The advertised ED salary range did not consider that factor.
- The ED's job description was similar to the Inspector General's (IG) position, yet the ED's salary was less than the IG's salary.

VIII. – CONTINUED

Mr. Merriman stated that:

- To his recollection, the IG position was benchmarked at a higher rate as per salary surveys. It was believed by County staff, citizen groups, and other individuals involved in the recruiting process that the scope and responsibilities of the IG would outweigh the ED's duties.
- The County was comfortable that the IG's and ED's salary ranges were comparable. However, it was within the jurisdiction of the COE to adjust the ED's salary.

Judge Rodgers remarked that initially the County decided that the COE would select the candidate and the County would negotiate the salary.

Mr. Merriman said that the COE had recommended the final salary that was negotiated with Mr. Johnson.

Mr. Reinhart recollected that once the ED candidate was selected, the County negotiated with Mr. Johnson, and the County provided the COE with a contract for ratification and eventual approval.

Mr. Farach commented that the ED's salary was at the upper end of the advertised salary range.

Mr. Harbison asked whether the County considered that the ED's position could have been filled by an attorney.

Mr. Merriman explained that:

- Employing an attorney for the ED position was a preference, not a requirement. When the COE's position was contemplated, it was anticipated that two positions would have been filled: one for the ED, and another for an attorney in the ED's office.
- The COE could increase the ED's compensation, but the final salary had to fall within the County's pre-established salary range.
- Salary range was determined by comparing educational requirements and functional responsibilities with local market data and the County's organizational structure.

VIII. – CONTINUED

- He would was not prepared to identify which County positions were comparable to the ED's prior to conferring with HR staff.

Judge Rodgers expressed concern that the COE's credibility could be questioned if Mr. Johnson's salary was increased after holding the position for four months.

Dr. Fiore stated that after Mr. Johnson was selected for the position, the COE agreed that his salary would be reviewed within six months because it was apparent that he was underpaid.

Mr. Merriman stated that:

- As per the ordinance, the COE had the authority to increase the ED's salary within the pre-established range, which was contingent on the County's budget.
- The ordinance stipulated that HR would provide staff assistance to the COE during the hiring process. Salary ranges varied among County employees according to years of service.

Mr. Reinhart reiterated that the ED's responsibilities were increasing, and that HR assistance was warranted at this time to determine Mr. Johnson's new salary.

Mr. Farach asked for further explanation on the survey relating to the City of Los Angeles' salary program.

Mr. Merriman explained that the step program stipulated that an employee would receive annual salary increases which would be capped at the latter salary range. He said that there were very few positions similar to the ED's nationwide that could be used for the salary analysis.

Judge Rodgers recommended that the COE vote on reevaluating the ED's salary and the procedure that would be used to execute that process.

Mr. Reinhart asked whether a COE member could be designated to collect the ED's salary data and meet with County HR staff to formulate a salary proposal for the entire commission.

VIII. – CONTINUED

Mr. Merriman said that he would consult with Mr. Berger for legal clarification on the procedure.

MOTION to approve accepting that the COE establish a salary review committee, undertake a formal review of Mr. Johnson’s compensation, and discuss the findings at a future meeting. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

MOTION to approve accepting that pursuant to Mr. Berger’s approval, Bruce Reinhart would be appointed to work with the County human resources department to review the compensation for the executive director’s position. Motion by Dr. Robin Fiore, seconded by Ronald Harbison, and carried 5-0.

Judge Rodgers recommended that a deadline be assigned to the review.

Mr. Reinhart suggested that the matter be placed on the COE’s January 6, 2011, meeting agenda. He said that if his review was not completed by the next meeting, then a status report would be provided to the COE.

IX. PUBLIC COMMENTS – None

X. EXECUTIVE DIRECTOR COMMENTS

X.a. Referendum Update

Mr. Johnson stated that:

- David Baker had been nominated for appointment to the drafting committee. The COE’s recommendation would be presented to the board on December 7, 2010.
- He attended the League of Cities (LOC) meeting where Kurt Bresner of the City of Boynton Beach (Boynton Beach) and Mike Worenstein of the Town of Lantana (Lantana) were nominated by the LOC for the drafting committee.
- Both nominees were knowledgeable and had been involved in the ethics process from its inception. Boynton Beach and Lantana were the only municipalities that conceded to the jurisdiction of the IG and COE.

X.a. – CONTINUED

- His role on the drafting committee was to represent the COE regarding the Code, the lobbyist registration ordinance, and the post-employment ordinance. Monthly status reports would be provided to the COE.
- The next COE meeting was scheduled for January 6, 2011.

(CLERK'S NOTE: See page 25 for additional comments on item X.)

XI. BOARD COMMENTS

XI.a. Manuel Farach, Esq. – None

XI.b. Dr. Robin Fiore

Dr. Fiore stated that a March 2011 COE appearance was scheduled at the Florida Atlantic University campus in the Town of Jupiter. She added that a COE appearance had also been held at Palm Beach Atlantic University (PBAU), and it was anticipated that future appearances would be scheduled at colleges and universities. She concluded by wishing everyone happy holidays.

XI.c. Ronald Harbison – None

XI.d. Bruce Reinhart, Esq.

Mr. Reinhart expressed gratitude to fellow COE members for their work on the commission and wished everyone a happy new year.

XI.e. Judge Edward Rodgers

Judge Rodgers stated that Boynton Beach should be commended for its efforts to uphold ethical practices. He said that it was important for the COE to demonstrate sincerity, legitimacy, and need, because the commission in its efforts to uphold morality had become leaders.

(CLERK'S NOTE: Item X. was discussed at this time.)

X. EXECUTIVE DIRECTOR COMMENTS – Continued from page 24

X.b. UNSCHEDULED ITEM

DISCUSSED: Executive Director's Budget and Interns.

Mr. Johnson stated that:

- The ED's budget was \$70,000 less than forecasted for the 2010 fiscal year.
- The ED's office had applied for a University of Miami (University) Law School program where new graduates worked as interns in governmental and non-profit organizations and were paid a monthly stipend of \$2500 by the University. In January 2011, the University would be contacted about the status of the application.
- No additional information had been learned on the issue of liability insurance.
- The ED was exploring whether PBAU could provide interns for the ED's office.

X.c. UNSCHEDULED ITEM

DISCUSSED: Gift Law.

Mr. Johnson stated that:

- Boynton Beach distributed a letter to vendors informing them that employees were prohibited from accepting gifts for the holidays. The item was added to today's agenda following discussions with Judge Rodgers.
- County officials and employees should be cautioned that gifts received from lobbyists, or vendors that employed lobbyists, were prohibited.
- Any gift of more than \$100 that was not received from a family member was reportable at the end of each year.

(CLERK'S NOTE: The numerical sequence of the agenda was restored.)

XII. ADJOURNMENT

MOTION to adjourn the meeting. Motion by Bruce Reinhart, seconded by Dr. Robin Fiore, and carried 5-0.

At 6:19 p.m., the chair declared the meeting adjourned.

APPROVED:



Chair/Vice Chair