

Commission on Ethics Ordinance

(Effective date June 1, 2022)

Section 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.

Section 2-255 – Membership, qualifications, terms, vacancies.

- (a) Composition and appointment. The commission on ethics shall be composed of five (5) members. The members of the commission on ethics shall be appointed as follows:
- (1) The president of the county association of chiefs of police shall be requested to appoint a former law enforcement official with experience in investigating white collar crime or public corruption.
 - (2) The president of the Hispanic Bar Association of Palm Beach County, in conjunction with the president of the F. Malcolm Cunningham, Sr. Bar Association and the president of the Palm Beach County Bar Association, shall be requested to appoint an attorney with experience in ethics regulation of public officials and employees.
 - (3) The president of Florida Atlantic University (FAU) shall be requested to appoint a faculty member, who teaches at an accredited institution of higher education with a campus located within the county and has taught a course in professional legal ethics or has published or performed services in the field of professional legal ethics
 - (4) The president of the Palm Beach Chapter of Association of Certified Fraud Examiners or the president of the Palm Beach Chapter of the Florida Government Finance Officers Association shall be requested, on a rotating basis for each term of the four-year appointments, to appoint a single member who possesses at least five (5) years of experience as a certified public accountant or as an executive level, financial officer with forensic auditing, government accounting, or government auditing experience. The president of the Palm Beach Chapter of the Association of Certified Fraud Examiners shall make the initial appointment. If the scheduled appointing entity declines such appointment or fails to make such appointment within 60 days of the COE request, the appointment will default to the other appointing entity to make an appointment to the COE within 60 days of this default.
 - (5) The board of directors of the Palm Beach County League of Cities, Inc. shall be requested to appoint a person who has served as a former elected official, former manager, chief administrative officer, or chief executive officer for a governmental entity in the county.

All appointing officers or entities identified in subsections (a)(1) through (5) shall in good faith endeavor to appoint members of the commission on ethics within forty-five (45) days of the effective date of the ordinance from which this division is derived. Each appointing entity shall promptly provide notice of each appointment to the executive director of the commission on ethics, inspector general, and the county administrator.

- (b) **Additional qualifications.** Each member of the commission on ethics shall be of outstanding reputation for integrity, responsibility, and commitment to serving the community. Appointing entities should consider appointments to the commission on ethics that are representative of the community-at-large and reflect the

racial, gender, and ethnic make-up of the community. Before entering upon the duties of office, each appointee on the commission on ethics shall take the prescribed oath of office pursuant to Florida Constitution, Art. II §5(b). Members of the commission on ethics shall serve without compensation.

- (c) **Term.** The members of the commission on ethics shall serve staggered terms of four (4) years each, provided that of the original members, two (2) members described in subsections (a)(1) and (2) shall be appointed for an initial term of two (2) years. The remaining three (3) members shall be appointed for an initial term of four (4) years. Thereafter, all members of the commission on ethics shall serve terms of four (4) years.
- (d) **Vacancies.** A vacancy occurring during or at the expiration of a member's term on the commission on ethics shall be filled as provided in subsections (a) and (b), no later than sixty (60) days after the vacancy occurs.
- (e) **Additional requirements.** No individual, while a member of the commission on ethics, shall:
 - (1) Hold or campaign for any elective political office;
 - (2) Hold office in any political party or political committee;
 - (3) Actively participate in or contribute to any political action committee, or to any campaign for state or local elective office or for any U.S. Congressional or Senate office serving the State of Florida;
 - (4) Be employed by Palm Beach County, any municipality within the county, or any other governmental entity subject to the authority of the commission on ethics or the inspector general; or
 - (5) Allow his or her name to be used by a campaign in support of or against any candidate for political office or any referendum or other ballot question. Nothing herein shall preclude a member of the commission on ethics from signing a petition in support of or against any referendum or other ballot question.
- (f) **Removal process.** If a violation of any of the enumerated requirements in subsection (e) herein and is substantiated, the commissioner in question, the appointing entity, and the other commissioners shall be notified. The commissioner may resign by providing notification to the executive director in writing, or the appointing entity may remove the commissioner from office by providing notification to the executive director in writing. If the commissioner does not resign or the appointing entity does not remove the commissioner from office, the executive director shall place the matter on the next agenda for the discussion. A commissioner can be removed from office by the commission upon a majority vote of the remaining commissioners.

Section 2-256 – Applicability of code of ethics ordinance.

The countywide code of ethics ordinance shall be applicable to all persons and/or entities within the jurisdiction of said ordinance and shall apply to the members of the commission on ethics.

Section 2-257 – Organization.

- (a) The commission on ethics shall elect one (1) of its voting members as chairperson and one (1) of its voting members as vice chairperson who shall serve a one (1) year term. No chairperson shall be permitted to serve two (2) consecutive terms as chairperson. No vice chairperson shall be permitted to serve two (2) consecutive terms as vice chairperson.
- (b) The commission on ethics shall adopt bylaws and rules of procedure that are consistent with the provisions of this division and rules and regulations for the commission on ethics' governance. The commission on ethics shall hold regular meetings in accordance with the bylaws of the commission and may hold such other meetings as it deems necessary.
- (c) All meetings of the commission on ethics that are not conducted in executive session as permitted by law shall be public, and written minutes of the proceedings thereof shall be maintained by the minute's department of the clerk of courts. All matters heard by the commission on ethics in executive session shall be audio recorded or audio/video recorded and made available to the public upon the conclusion of the matter. Copies of all

minutes, resolutions, decisions, or advisory opinions of the commission on ethics shall be published to the website of the commission on ethics no later than thirty (30) days subsequent to any meeting of the commission on ethics.

- (d) The commission on ethics shall be empowered to appoint an executive director and to remove such appointee at will. The commission on ethics shall utilize a competitive selection process when selecting an executive director. The commission on ethics in consultation with county administration shall fix the executive director's salary, subject to ultimate budget approval by the board of county commissioners. The executive director shall be empowered to appoint, remove, and suspend employees or agents of the commission on ethics, subject to ultimate budget approval by the board of county commissioners. The executive director shall be further empowered to adopt personnel and management policies consistent with like policies in place for county personnel.

Section 2-258 – Powers and duties.

- (a) 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.
- (b) As set forth in the Office of Inspector General, Palm Beach County, Florida Ordinance, the commission on ethics shall serve along with one (1) delegate each from the state attorney's office and public defender's office for the Fifteenth Judicial Circuit as the inspector general committee. The inspector general committee shall be authorized to select the inspector general to determine whether or not to renew the term of an inspector general, and to participate in the removal of the inspector general as set forth in greater detail in the Office of Inspector General, Palm Beach County, Florida Ordinance.
- (c) The commission on ethics shall from time to time review ordinances and state and federal laws relating to ethics in government and shall report and make recommendations to the board of county commissioners and municipal elected officials as it deems appropriate.
- (d) The commission on ethics shall develop and deliver ethics training and outreach programs for the benefit of county and municipal employees and officials, county and municipal vendors, other public or private entities representing residents of the county or any municipality, and other entities that do business with or are regulated by the county or the municipalities located within the county. The commission on ethics may recommend that the board enter into agreements with other entities to provide such training and outreach programs to be administered by the commission on ethics.

Section 2-258.1 – Extended jurisdiction by interagency agreements.

It is anticipated that taxing districts and other public officials and entities will recognize and desire to benefit from the services of the commission on ethics. The commission on ethics may additionally be empowered to review, interpret, render advisory opinions, and enforce similar rules or regulations duly adopted by any commission, bureau, district, or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission on ethics and said entity. The memorandum of understanding or agreement shall include a provision for fees to be paid to the commission on ethics from the public entity in exchange for such benefits at a rate established by the commission on ethics. All fees paid under any such agreement shall be used solely to fund the operations of the commission on ethics and its staff. Any such agreement or memorandum of understanding is subject to final approval of the board of county commissioners, but such approval shall not be unreasonably withheld.

Section 2-259 – Financial support for the commission.

- (a) The commission on ethics shall establish a fiscal year that coincides with that of the county. Pursuant to its annual budget process, the county shall provide sufficient financial support for the commission on ethics to fulfill its duties as set forth in this division. In consultation with the county office of financial management and budget, the commission on ethics shall timely submit to the board of county commissioners a budget request including a reasonable estimate of operating and capital expenditures, which request shall not be implemented until approved by the board of county commissioners.
- (b) The commission on ethics budget request shall be prepared by the county office of financial management and budget in consultation with the commission on ethics' executive director and staff on official county budget forms in a format prescribed by the county office of financial management and budget, shall be reviewed in a manner similar to that in which other county departments are reviewed, and shall be incorporated in the proposed budget and timely submitted to the board of county commissioners each year. Nothing contained herein shall be construed to prohibit the commission on ethics from submitting supplemental budget requests to the board of county commissioners which, if approved, shall constitute amendments to the county budget.
- (c) In addition to budgetary appropriations made by the county, the board of county commissioners, may, for the benefit of the commission on ethics, accept grants, contributions, or appropriations from the federal government, state government, any municipality within the county, or any academic institution or nonprofit entity that has not entered into a contract or transacted business with the county or any governmental entity subject to the provisions of this ordinance. The commission on ethics may accept grants, contributions, or appropriations from an academic institution or nonprofit entity that has entered into a contract or transacted business with the county, if the board of county commissioners, by resolution, approves the grant, contribution, or appropriation. No other grants, contributions, or appropriations may be accepted by the commission on ethics.

Section 2-260 – Procedure on Complaints filed.

- (a) **Filing of complaints.**
 - (1) Any person may file a complaint with the commission on ethics.
 - (2) The executive director of the commission on ethics, the inspector general, or the state attorney may file a complaint with the commission on ethics.
- (b) **Legal sufficiency of complaints.**
 - (1) In order to be found legally sufficient, complaints filed by persons under section (a)1 above, must:
 - a. Be in writing, and executed on a form prescribed by the commission on ethics;
 - b. Allege the elements of a violation within the commission on ethics' jurisdiction in the complaint and/or supporting documents provided;
 - c. Be based substantially upon the personal knowledge of the complainant; and
 - d. Be signed under oath or affirmation by the complaining person.
 - (2) In order to be found legally sufficient, complaints filed by the executive director of the commission on ethics, the inspector general, or the state attorney must:
 - a. Be in writing, and executed on a form prescribed by the commission on ethics;
 - b. Allege the elements of a violation within the commission on ethics' jurisdiction in the complaint and/or supporting documents provided;
 - c. Be sworn to by the person filing the complaint before a notary public and contain the following language: "Personally known to me and appeared before me, _____, whose signature appears below, being duly sworn, says that the allegations set forth in this complaint are based upon facts which have been sworn to as true by a material witness or witnesses and which if true would constitute the offenses alleged and that this complaint is instituted in good faith."

Upon a finding of legal sufficiency by the executive director or general counsel, commission on ethics staff shall initiate a preliminary investigation.

- (c) **Documents Provided to the Respondent.** Within twenty (20) days of a legal sufficiency finding, a copy of the complaint and all documents in support thereof shall be sent to the alleged violator, otherwise known as the respondent.
- (d) **Preliminary investigation and public hearing.** A preliminary investigation shall be undertaken by the commission on ethics of each legally sufficient complaint over which the commission on ethics has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission on ethics finds no probable cause to believe that a violation has been committed, the commission on ethics shall dismiss the complaint with the issuance of a report to the complainant and the respondent. If the commission on ethics finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall set the matter for a public hearing and notify respondent via certified mail, hand delivery, or courier. The commission on ethics may use telephone or electronic mail as a secondary means of notice. The commission on ethics or the hearing officer conducting the public hearing may order commission staff to conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of the county. The public hearing provided for in this section shall be held within one hundred twenty (120) days of the probable cause determination unless extended by the commission on ethics or the hearing officer for good cause based on the request of a party or on its own initiative.
- (e) **Investigations.** Investigations shall be conducted by commission on ethics staff or by any other person or agency so designated by the commission on ethics under the supervision of the executive director. Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue. Where other potential violations of any ordinance within the commission on ethics' jurisdiction are found during an investigation of all facts and persons materially related to the complaint at issue, the additional violations may be added by the executive director by amendment of the complaint, or may be filed as a new complaint. Subsequent to the filing of a complaint and notice to the respondent, the commission on ethics has an ongoing duty to disclose to the respondent any and all additional documents, statements of witnesses and other evidence, not otherwise subject by statute to nondisclosure, obtained by the commission pursuant to the ongoing investigation of a complaint.
- (f) **Counsel.**
 - (1) **Counsel to commission on ethics.** The executive director and general counsel of the commission on ethics shall act as counsel to advise the commission on ethics.
 - (2) **Advocate.** The commission on ethics shall retain legal counsel to serve as the advocate. The advocate shall prosecute all probable cause hearings before the commission on ethics where commission on ethics staff is recommending a finding of probable cause, and all final hearings before the hearing officer. The executive director or general counsel may serve as advocate, provided he or she is a member of the Florida Bar in good standing, and provided he or she serves as advocate only during proceedings before the commission on ethics or hearing officer where he or she is presenting a stipulation of settlement, is recommending a finding of no probable cause, or is recommending a dismissal. The advocate may serve on a volunteer basis.
 - (3) **Respondent.** The respondent may appear on his or her own behalf or may be represented by a lawyer. All notices and communications to a respondent represented by a lawyer shall be made through respondent's lawyer.
- (g) **Public records exemption.** The commission on ethics and its staff shall be considered "an appropriate local official" for the purposes of whistleblower protection provided for in Section 112.3188(1), Florida Statutes. The complaint and all records held by the commission on ethics and its staff related to an active preliminary

investigation are confidential and exempt from disclosure in a manner consistent with the provisions in Florida Statutes, Sections 112.324(2) and (3) and 112.3188(2). In addition, any proceeding conducted by the commission on ethics pursuant to a complaint or preliminary investigation is exempt from the provision Section 286.011, Florida Statutes, and Article 1, §24(b), Florida Constitution, as set forth in Section 112.324(2) and (3), Florida Statutes. Once a preliminary investigation is complete and a probable cause determination made, all other proceedings conducted pursuant to this subsection shall be public meetings within the meaning of Florida Statutes, Ch. 286, and all other documents made or received by the commission on ethics or hearing officer shall be public records within the meaning of Florida Statutes, Ch. 119, subject to whistleblower confidentiality as provided for in Section 112.3188(1), Florida Statutes.

- (h) **General power of subpoena.** The commission on ethics shall be empowered to subpoena and investigate. In the case of a refusal to obey a request for documents or for an interview during an investigation, the commission on ethics may subpoena relevant witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other relevant items. The commission on ethics may delegate to its staff the authority to administer oaths and affirmations. In the case of a refusal to obey a subpoena issued to any person, the commission on ethics may make application to any circuit court of this state, which shall have jurisdiction to order the witness to appear before the commission on ethics and to produce evidence, if so ordered, or to give testimony relevant to the matter in question. Any person who fails to obey the order may be punished in a court of law. Seventy-two (72) hours prior to serving a subpoena, the executive director shall provide written notice to the state attorney and the U.S. Attorney for the Southern District of Florida. The commission on ethics shall not interfere with any ongoing criminal investigation or prosecution of the state attorney or the U.S. Attorney for the Southern District of Florida. When the state attorney or the U.S. Attorney for the Southern District of Florida has explicitly notified the commission on ethics in writing that he or she is conducting an ongoing criminal investigation or prosecution, and he or she believes the commission's investigation or other procedures may interfere with the ongoing investigation or prosecution, the commission on ethics shall suspend service of subpoena, examination of witnesses, or other investigative activities as set forth in the notice until such time as the ongoing investigation or prosecution is completed. During this period, the two-year statute of limitations under Section 2-260.8 of the Commission on Ethics Ordinance shall be tolled until the completion of the ongoing investigation or prosecution. During the tolled period, the commission on ethics staff shall contact the prosecuting authority every 90 days to determine the status of the investigation or prosecution until the completion of the ongoing investigation or prosecution.
- (i) **The Florida rules of civil procedure shall apply to discovery.** The hearing officer may order any additional discovery that he or she deems fair and just.
- (j) **Subpoenas for discovery.** At any time after the commission on ethics orders a public hearing of the matter, the hearing officer conducting the public hearing may issue subpoenas, as provided in subsection (h), to effect discovery upon the written request of respondent or advocate. The requesting person shall submit to the commission on ethics staff, for dissemination to the hearing officer, a list of all witnesses he or she wishes to have deposed. The list shall contain the name and address of each witness 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*. The hearing officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.
- (k) **Subpoenas for public hearing.** The respondent and the advocate shall submit to the commission on ethics staff, for dissemination to the hearing officer, a list of all witnesses he or she wishes to have subpoenaed to attend the hearing. The lists shall contain the correct names and addresses of the witnesses and shall describe with particularity those documents or other items that he or she wishes to have the witness bring to the hearing pursuant to subpoena *duces tecum*. Subpoenas shall be issued as provided in subsection (h).

(l) **Motions.**

- (1) All motions shall be in writing unless made on the record during a hearing and shall fully state the actions requested and the grounds relied upon. The motion shall include a statement that the movant has conferred with the advocate and all other parties of record and shall state whether there is any objection to the motion.
- (2) The original of a written motion shall be filed with the commission on ethics staff and a copy served on all parties or their attorneys. The commission on ethics staff shall send a copy of the motion to the hearing officer conducting the public hearing.
- (3) The hearing officer conducting the public hearing shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motions, but is not required to hold a hearing on the motion in order to rule upon it.
- (4) Every written motion may be accompanied by, or included in, a written memorandum stating the grounds upon which the motion is based. Other parties to a proceeding may, within seven (7) days of service of a written motion, file written memoranda in opposition. The hearing officer may accept additional information from the parties that is deemed relevant. The hearing officer may impose limitations that are deemed appropriate.

(m) **Prehearing conferences.** The hearing officer may conduct one (1) or more prehearing conferences for the purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing the possibilities of settlement of the issues, examining exhibits and documents, exchanging names and addresses of witnesses, and resolving other procedural matters.

(n) **Exchange of witness lists.** Unless otherwise ordered by the hearing officer as a result of a prehearing conference, the advocate and the respondent(s) or counsel for respondent(s) shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing, with a copy being provided to the hearing officer. Names and addresses of witnesses discovered subsequently shall be disclosed to the other party or parties and to the hearing officer as soon as possible. Failure to disclose the name and address of a witness may result in the exclusion of the witness's testimony, according to the rule applied in civil judicial proceedings.

Section 2-260.1 – Public hearing procedures.

(a) **Right to public hearing.** After finding of probable cause, a respondent is entitled to a public hearing on the complaint. The hearing shall be conducted by a hearing officer selected from a list of hearing officers or special magistrates established by Palm Beach County, who have received training in the code of ethics by commission on ethics staff. Payment for hearings officers conducting hearings for the commission on ethics shall be paid by the county in accordance with the current schedule established by the county for hearing officers or special magistrates at the time of the assignment of the hearing officer to the matter to be heard. In order to be eligible for inclusion on the list, hearing officers for the commission on ethics shall have the following minimum qualifications:

- (1) Be a member, in good standing of the Florida Bar for at least the preceding five years; and
- (2) Be competent in matters of governmental ethics, including the current version of the Palm Beach County Code of Ethics, related ordinances, and rules, practices and advisory opinions of the Palm Beach County Commission on Ethics; and
- (3) Attorneys with prior judicial experience or experience as a hearing officer, magistrate, mediator, or special master shall be deemed uniquely qualified; and
- (4) Be of outstanding reputation for integrity, responsibility, and commitment to serving the community; and
- (5) No individual, while a hearing officer for the commission on ethics shall:
 - (a) Hold or campaign for any elective political office;
 - (b) Hold office in any political party or political committee;
 - (c) Actively participate in or contribute to any political action committee, or to any campaign for state or local elected office or for any U.S. Congressional or Senate office serving the State of Florida;

- (d) Be employed by Palm Beach County, any municipality within the county, or any other governmental entity subject to the authority of the commission on ethics or the inspector general, other than as a county hearing officer or special magistrate;
 - (e) Allow their name to be used by a campaign in support of or against any candidate for political office or any referendum or other ballot question. Nothing herein shall preclude a hearing officer from signing a petition in support of or against any referendum or other ballot question.
 - (6) Hearing officers shall be subject to the Palm Beach County Code of Ethics in the same manner as an individual serving as a Palm Beach County advisory board member.
- (b) **Presentation of the case.** The advocate shall present his or her case first. Respondent may then present his or her case. Rebuttal evidence may be permitted at the discretion of the hearing officer.
- (c) **Opening and closing statements.** Opening and closing statements may be presented by the advocate and the respondent. The advocate may make the first statement and the respondent may follow. Rebuttal by the advocate may be permitted or may be denied.
- (d) **Evidence.**
- (1) Stipulations may be received and are encouraged as to uncontested matters.
 - (2) Oral evidence shall be taken only on oath or affirmation.
 - (3) The respondent and the advocate shall have the right: to present evidence relevant to the issue; to cross-examine opposing witnesses on any matter relevant to the issue; and to impeach any witness regardless who first called him or her to testify.
 - (4) 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 recognized in civil actions, or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The hearing officer 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.
- (e) **Transcript of proceedings.** The proceedings shall be recorded by recording instruments or by a court reporter. Respondent may, at his or her own expense, provide a court reporter or additional recording instruments. The commission on ethics may provide a court reporter to any proceeding conducted by the commission or a hearing officer. No transcript of the proceedings shall be prepared unless requested by the commission on ethics, the hearing officer, or by the respondent. If the respondent requests that a transcript be prepared by a court reporter, the respondent shall pay the expense of transcription. If the respondent requests that the commission on ethics prepare a transcript from recording instruments and the commission on ethics grants such request, the respondent shall pay the commission on ethics the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript.
- (f) **Proposed public report.** After the conclusion of the hearing, the respondent and the advocate may present written proposed public reports, within a time designated by the hearing officer. If a proposed public report is filed by the respondent or the advocate, each proposed finding in the proposal that is rejected shall be accompanied by a statement summarizing the reasons for rejection.
- (f) **Motions to dismiss filed by advocate.** After probable cause is found and a public hearing is ordered by the commission on ethics, and after further investigation or discovery is made by the advocate, the advocate may move to dismiss the proceeding if the advocate concludes that there is insufficient evidence to proceed to the public hearing in good faith. Such a motion shall specifically state the grounds upon which it is made. The

motion shall be heard by the commission on ethics in accordance with the procedure provided for in section 2-260(i).

- (h) **Public report.** Upon completion of any hearing initiated under this subsection, the hearing officer shall make a finding and public report as to whether any provision within its jurisdiction has been violated. If the hearing officer finds, by clear and convincing evidence, based upon competent substantial evidence in the record, that a violation has been committed, the hearing officer shall determine whether the violation was intentional or unintentional and include that determination in the public report. The hearing officer shall, within ninety (90) days of the final hearing, render the public report and submit it to the commission on ethics unless extended by the hearing officer for good cause.
- (i) **Order Imposing Penalty.** If the hearing officer finds that a violation has been committed, the commission on ethics shall hold a hearing to determine an appropriate penalty and render a final order imposing the appropriate penalty as provided in the ordinance being enforced and disposing of said complaint. The hearing provided for in this subsection shall be held within ninety (90) days of the issuance of the public report by the hearing officer, unless extended by the commission on ethics for good cause based on the request of a party or on its own initiative. If a person fails to comply with an order issued by the commission on ethics, the commission on its own behalf may make application to any circuit court of this state, which shall have jurisdiction to order the violator to comply with the order of the commission on ethics. Any violator who fails to obey the order may be punished by the court.

Section 2-260.2 – Notification and referral to other authorities.

As provided for by ordinance within its jurisdiction, the commission on ethics may refer a matter to the state attorney or any other appropriate official or agency having authority to initiate prosecution when deemed appropriate. The state attorney or other appropriate agency may decline prosecution or enforcement of any matter referred under this division.

Section 2-260.3 – Dismissal of complaints.

Notwithstanding any other provisions of this division, the commission on ethics or hearing officer 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 or hearing officer dismisses a complaint as provided in this subsection, the commission on ethics or hearing officer shall issue a public report and final order stating with particularity its reasons for the dismissal.

Section 2-260.4 – Frivolous or groundless complaints.

In any case in which the commission on ethics or hearing officer determines that the complaining party filed a frivolous or groundless complaint as defined in Section 57.105, Florida Statutes, or a complaint with malicious intent and with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains material false allegations, the commission on ethics or hearing officer shall order the complaining party to pay any costs and attorney's fees incurred by the commission on ethics and/or the alleged violator. The determination by the commission on ethics or hearing officer regarding whether a complaint is frivolous or groundless shall be deemed conclusive.

Section 2-260.5 – Effect on other laws.

The provisions of this division shall be deemed supplemental to any other applicable county ordinance or state or federal law and are not intended to replace or repeal any provision of state or federal law or of this Code.

Section 2-260.6 – Prospective jurisdiction.

The commission on ethics shall be empowered to consider alleged violations within its jurisdiction committed on or after the effective date of the ordinances set forth in Section 2-258(a), as each may be amended from time to time. Any alleged violation committed before the effective date of any such ordinance or amendment shall be governed by the applicable law in effect at the time of the alleged violation.

Section 2-260.7 – Personnel proceeding.

Where an employee of the county or other governmental entity subject to the jurisdiction of this ordinance is alleged to have violated an ordinance within the jurisdiction of the commission on ethics and, based upon the same set of facts, is subject to an ongoing disciplinary action initiated by the county or other governmental entity subject to the jurisdiction of this ordinance the commission on ethics shall stay consideration of a complaint until the conclusion of the personnel proceeding. Nothing herein shall abridge employees' constitutional right to collective bargaining.

Section 2-260.8 – Statute of limitations.

- (a) No action may be taken on a complaint filed more than two (2) years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation. Where the allegations are the subject of a personnel proceeding or where the complainant is required to exhaust his or her administrative remedies prior to filing a complaint, the statute of limitations shall be tolled until the termination of said personnel proceeding or the exhaustion of administrative remedies. As provided in Section 2-260(h), where the commission on ethics has suspended investigative activities after the state attorney or the U.S. Attorney for the Southern District of Florida has notified the commission on ethics that the commission's investigation may interfere with an ongoing criminal investigation or prosecution, the statute of limitations shall be tolled until the completion of the ongoing investigation or prosecution.
- (b) Notwithstanding any limitation of actions under subsection (a), a prosecution for willful violations referred to the State Attorney pursuant to Code of Ethics Section 2-448(d) may be commenced at any time when the respondent is in public office or employment, within two (2) years from the time the respondent leaves public office or employment, or within two (2) years of the offense, whichever time is greater.

Section 2-260.9 – Advisory opinion.

Any person within the jurisdiction of the commission on ethics, when in doubt about the applicability or interpretation of any provision within the commission on ethics' jurisdiction to himself or herself in a particular context, may submit in writing the facts of the situation to the commission on ethics with a request for an advisory opinion to establish the standard of public duty, if any. A person requesting an advisory opinion may withdraw the request at any time up to ten (10) days before the commission on ethics convenes a public meeting to consider the request. An advisory opinion shall be rendered by the commission on ethics on a timely basis, and each such opinion shall be numbered, dated and published.

Section 2-260.10 – Appeals.

- (a) Any final order of the commission on ethics or hearing officer may be appealed by filing a petition for writ of certiorari in the Fifteenth Judicial Circuit Court in and for Palm Beach County. The commission on ethics shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure. A fee shall be charged by the commission on ethics for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such fee may be waived by the executive director if the party requesting the record is indigent.
- (b) Costs or fees may not be assessed against the commission on ethics or hearing officer in any appeal from a final order or advisory opinion issued by the commission on ethics or hearing officer pursuant to this division.
- (c) Unless specifically ordered by the commission on ethics or by a court of competent jurisdiction, the commencement of an appeal does not suspend or stay a final order or advisory opinion of the commission on ethics or hearing officer.