

CITY OF JACKSONVILLE

ELLEN SCHMITT
CHAIR



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ERICH FREIBERGER
DARCY GALNOR
LATONYA LIPSCOMB SMITH

WILLIAM MAULE
JUDGE LINDA MCCALLUM
SCOTT SIMPSON

ETHICS COMMISSION SPECIAL MEETING MINUTES

City Hall, Mezzanine Level, Exam Rooms 1 and 2
Tuesday, April 4, 2023

The meeting was called to order at 4:32 p.m. by Ms. Schmitt. Attendees in person: Chair Ellen Schmitt, J.J. Dixon, Darcy Galnor, LaTonya Lipscomb Smith, William Maule, and Linda McCallum. Attendees via phone upon approval of Ethics Commission: Erich Freiberger and Scott Simpson.

Others in attendance: Kirby Oberdorfer, Director of the Office of Ethics, Compliance and Oversight (OECO); Paige Johnston, Ethics Counselor (OECO); Andrea Myers, Program and Training Manager (OECO); Carla Miller, Senior Ethics Advisor (OECO); Cherry Shaw Pollock, Office of General Counsel (OGC); and Sandy Homrighouse, Executive Assistant (OECO).

Public In Attendance: Carnell Oliver, Richard Reichard, Daniel K. Bean, Stacy Scaldo, Robert Willis, Matt Lascell, Jim Pigott and News 4 Jax cameraperson, David Bauerlein and Dan Scanlan

Confirmation of Quorum:

A quorum of six (6) Ethics Commission members present in-person for the meeting was established. The Ethics Commission members and staff introduced themselves for the record.

Mr. Simpson requested to attend the meeting telephonically due to extraordinary circumstances preventing him from attending the meeting in person. Ms. Schmitt stated the Ethics Commission needs to determine whether Mr. Simpson's inability to attend the meeting in person constitutes extraordinary circumstances. Mr. Simpson explained his reason for being unable to attend the meeting in person due to a health issue of a family member. Ms. Oberdorfer summarized the Ethics Commission Internal Operating Procedures Rule IV(b) that defines extraordinary circumstances, including "other health related issues" and "extraordinary family obligation." Judge McCallum made a motion that Mr. Simpson's reason to attend telephonically is an extraordinary circumstance. Ms. Dixon seconded the motion. With no further discussion, the vote of only those Commission members physically present in the room was 6-0 in favor.

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Additionally, Dr. Freiberger requested to attend the meeting telephonically due to extraordinary circumstances preventing him from attending the meeting in person. Ms. Schmitt stated the Ethics Commission needs to determine whether Dr. Freiberger's inability to attend the meeting in person constitutes extraordinary circumstances. Dr. Freiberger explained his reason for being unable to attend the meeting in person due to being on academic sabbatical in Greece. Upon request by Ms. Schmitt, Ms. Oberdorfer advised that Dr. Freiberger's inability to attend the meeting in person may meet the criteria of an extraordinary circumstance due to a "previously scheduled unavoidable conflict." Judge McCallum made a motion that Dr. Freiberger's reason to attend telephonically is an extraordinary circumstance. Ms. Lipscomb Smith seconded the motion. With no further discussion, the vote was 7-0 in favor (vote by Ethics Commission members physically present in the room & Scott Simpson via telephonic attendance).

Ms. Galnor declared a conflict due to her relationship with Daniel Davis and left the meeting at 4:38 p.m. Following the departure of Ms. Galnor, the quorum was confirmed with five (5) Ethics Commission members present in-person for the meeting.

New Business:

Letter sent to the Ethics Commission by the City Council Special Investigatory Committee on JEA Matters ("SIC"): Ms. Schmitt reviewed the packet of information provided to Ethics Commission members: (1) City Council SIC letter to Ethics Commission dated March 22, 2023; (2) Chronology of Key Events provided to SIC; (3) Opinion from Office of General Counsel March 29, 2023 (4) Chapter 602 Part 9 provisions relating to Ethics Commission; (5) Memorandum from Stacy Scaldo and Daniel Bean, legal counsel for Council Member Cumber; and (6) Ethics Office Overview of SIC history and recent meetings.

Upon Ms. Schmitt's request, Ms. Oberdorfer provided background information on how the SIC letter came before the Ethics Commission, including a summary of the March 22nd letter, a history of SIC and a summary of SIC meetings during 2023. At the March 9, 2023 meeting, SIC voted to file charges with the Jacksonville Ethics Commission on March 22, the day after the local elections, due to a restriction in state law and the local Ethics Commission Complaint Procedures that prohibits the filing of a complaint against a candidate within 30 days of an election. A discussion occurred regarding the timing of when information first came to light regarding Council Member Cumber's husband, the date SIC requested involvement by the Jacksonville Ethics Commission in this matter and whether the vote at the March 9 SIC meeting to file charges with the Ethics Commission was prohibited by the Ethics Commission's rule or state law barring complaints against candidates within 30 days of an election.

Ms. Schmitt next requested Ms. Miller to provide additional background information. Ms. Miller provided an overview of the legislative history relating to the Ethics Commission duties and powers, including the limitation on subpoena power to conduct investigations, the two-year statute of limitations, authority to accept complaints, and duties in section 602.921(c). Thereafter, Ms.

Oberdorfer read a portion of the OGC opinion advising that the letter from SIC is a public record and any discussions regarding the letter are required by state law to be held in a public meeting.

Subsequently, a discussion occurred regarding concerns related to the SIC letter to the Ethics Commission: (1) the determination by SIC at the March 9 meeting to file charges after the 30 day prohibition on complaints during an election had ended, but subsequently submitted a request for an investigation in a letter rather than a sworn complaint, which would have afforded due process, (2) the timing of the SIC determination to file charges with the Ethics Commission during an election, (3) the information provided relating to matters that occurred outside the two-year statute of limitations for the Ethics Commission, (4) the potential political influence in this matter, and (5) the requirements and knowledge of the Ethics Commission complaint form.

Judge McCallum made a motion to take no action on the SIC letter due to the Ethics Commission not having jurisdiction to address the information and allegations outside the two-year statute of limitations. Dr. Freiburger seconded the motion. A discussion occurred regarding circumstances that may toll the statute of limitations (i.e. whether fraud or other actions prevented the information from being brought forward), requirements for a voting conflict and prohibitive conflict of interest, and whether the Ethics Commission could take action on this matter if it were to be submitted on a complaint form. Thereafter, Ms. Lipscomb Smith requested an amendment to the motion to include a letter from the Ethics Commission to SIC explaining the reasons why the Commission was not taking action on the SIC letter and the concerns the Commission has regarding the matter. Judge McCallum agreed to amend her motion to take no action on the SIC letter and include a letter to SIC expressing the Ethics Commission's concerns. The Commission then engaged in further discussion regarding the concerns to include in the Ethics Commission letter to the SIC: (1) timing of SIC publicly declaring its intention to file charges with the local Ethics Commission within the 30 days of the local election; (2) timing of years-old information provided to SIC within 30 days of the local election; (3) SIC request for investigation by the Ethics Commission not being included in sworn complaint form; (4) information provided to SIC being outside the 2-year statute of limitations; (5) Ethics Commission not be subject to political motivations; and (6) limited subpoena power of the Ethics Commission. Judge McCallum agreed to amend her motion to include these concerns in the letter to SIC.

Upon Ms. Schmitt's request, Ms. Pollock restated the motion of Judge McCallum to ensure it included the additional discussion points. Ms. Schmitt clarified her understanding that Judge McCallum's motion includes two separate actions by the Ethics Commission: (1) response to the SIC letter sent to the Ethics Commission and (2) a letter from the Ethics Commission to SIC advising of the Ethics Commission concerns. Judge McCallum agreed with Ms. Schmitt's clarification of her motion and confirmed her motion had two components: (1) the Ethics Commission take no action on the SIC letter because the request for Ethics Commission action was not included on a sworn complaint form, as determined by the Office of General Counsel, and the Ethics Commission cannot consider the information provided to SIC because it was outside

the 2-year statute of limitations and (2) send letter to SIC including the concerns raised during the discussion of the Ethics Commission.

Thereafter, Ms. Schmitt requested public comment on Judge McCallum's motion. Mr. Bean, legal counsel for Council Member Cumber and a citizen of Jacksonville, urged the Ethics Commission to affirm the amended motion by Judge McCallum and write a letter to SIC sharing the Ethics Commission's concerns. Mr. Bean stated that the matter was not properly before the Ethics Commission because there was no written complaint submitted to the Ethics Commission and further expressed his beliefs regarding the political motivation underlying this matter.

Mr. Oliver also provided public comment. He stated that the rule of law is important and should be applied uniformly to all. Mr. Oliver expressed his belief about a need for good government and his desire for the Florida Legislature to put forth uniform legislation to increase the statute of limitations for ethics matters to five years. He further asked that the Ethics Commission and Ethics Director request the Florida Commission on Ethics to create uniform ethics laws to increase accountability.

Ms. Schmitt then called for a vote on Judge McCallum's motion and Ms. Pollock restated the motion as requested. Judge McCallum clarified her motion to include: (1) no action by the Ethics Commission on the SIC letter because no sworn complaint was filed and the information provided is outside the 2-year statute of limitation and (2) send a response letter from the Ethics Commission to the SIC advising of the Ethics Commission concerns. During the initial vote on the motion, it was discovered that Mr. Simpson was disconnected from the telephone call. After reconnecting Mr. Simpson on the telephone, the motion was restated by Judge McCallum and the vote taken again to include Mr. Simpson. The motion passed unanimously with a vote of 7-0. Ms. Schmitt reiterated that Ms. Galnor previously abstained from this matter and left the meeting early, after rollcall.

Following the vote on Judge McCallum's motion, Dr. Freiburger made a motion for Ms. Schmitt to draft a letter on behalf of the Ethics Commission to the SIC expressing the concerns of the Ethics Commission previously discussed, including: (1) Ethics Commission not wanting the body to be politicized ; (2) request to Ethics Commission should have been on a sworn complaint form to ensure due process and the matter could be confidentially addressed in a "Shade" meeting authorized by state law; (3) notice of intent by SIC to file complaint within 30 days of the local election; and (4) years-long delay in providing the information to SIC. Ms. Dixon also requested that information be included in the letter to the SIC concerning the Ethics Commission complaint process and procedures. Motion was seconded by Ms. Lipscomb Smith. Ms. Miller recommended the Commission include statements previously made at the meeting regarding the importance of the rule of law and the Ethics Commission strictly following the duties and powers authorized by City Council in the Ordinance Code, which deliberately includes due process for those upon who a complaint is filed. Dr. Freiburger amended his motion to include this language.

Ms. Schmitt then requested public comment on the motion regarding the Ethics Commission letter to the SIC expressing the Commission's concerns. No public comment was provided. Ms. Schmitt called for a vote on Dr. Freiburger's motion. The motion passed unanimously with a vote of 7-0.

Ms. Lipscomb Smith departed the meeting at 5:59 p.m.

General Public Comment:

Ms. Schmitt requested general public comment. No public comment was provided.

Announcements:

No announcements were made. Ms. Schmitt thanked the Ethics Commission members for their work.

The meeting was adjourned at 6:00 p.m.

Sandy Homrighouse

5-15-23

Sandy Homrighouse, Executive Assistant, OECO

Date of Approval

This is a summary of the meeting and not a verbatim transcription. A recording of these proceedings is available at <http://www.coj.net/departments/ethics-office/notices,-agendas-minutes> .