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ETHICS COMMISSION COMPLAINTS COMMITTEE

MINUTES

October 11, 2017
Don Davis Room
City Hall

The meeting was called to order at 5:01 p.m. by Mr. John Hartley, Chair of the Complaints Committee, in workshop mode due to lack of quorum. A quorum for the meeting was established at 5:04 p.m. upon the arrival of Ellen Schmitt. Attendees: John Hartley, Joseph Rogan, and Ellen Schmitt. Excused absence: Brian Aull. Others in attendance: Carla Miller, Director of the Office of Ethics, Compliance and Oversight (OECO); Kirby Oberdorfer, Deputy Director of the OECO; and Cherry Pollock, Office of General Counsel (OGC).

New Business:

Mr. Hartley began the meeting by explaining the purpose of the meeting to discuss the proposed changes to the Ethics Commission Complaint Procedures drafted by Committee member Joseph Rogan. Mr. Rogan distributed a handout summarizing the major proposed revisions to the Complaint Procedures and briefly provided an overview of the main proposed revisions. Ms. Pollock explained that the OGC requested additional time to review the proposed revisions, particularly those relating to the bifurcation of the Ethics Commission into a Complaints division and Hearing Panel division. Ms. Miller advised she had conferred with OGC regarding compliance with current Complaint Procedures Rule 1(d) regarding timing for presentation of amendments to the Complaint Procedures.

Thereafter, the Complaints Committee discussed specific provisions of the proposed revisions to the Complaint Procedures as follows:

1. Discussed provision in Rule 1(c) definition of Complaints Committee and Rule 12(b) denoting Complaints Committee's dismissal of EC complaint as final decision of the Commission, and debated whether to designate dismissal as final decision of Commission or permit it to be appealable to entire Ethics Commission. Agreed to retain proposed revision that dismissal of complaint by Complaints Committee is final decision not appealable to entire Ethics Commission.
2. Rule 1(b) further revised as follows: "The Commission shall have jurisdiction as stated in Code § 602.921(a)."
3. Confirmed reference to "Sworn Complaints" in Rule 1(c) definition of Complaints Committee includes complaints self-initiated by Ethics Commission.

4. Confirmed definition of Advocate in Rule 1(c) has been replaced with definition of Special Ethics Counsel.
5. Agreed to revise definition of Ex Parte Communications in Rule 1(c) to exclude communications with OECO or OGC liaison to Ethics Commission.
6. Agreed to add “action” to final sentence in definition of Complaints Committee in Rule 1(c) to clarify that all decisions of Complaints Committee constitute final action and orders of the Commission.
7. Agreed to further revise definition of Hearing Officer in Rule 1(c) to state hearing officer cannot have participated in or attended any Executive Session at which the complaint for which he or she is serving as hearing officer is discussed.
8. Agreed to further revise definition of Hearing Panel in Rule 1(c) to state hearing panel member cannot have participated in or attended any Executive Session at which the complaint for which he or she is serving as hearing panel member is discussed.
9. Discussed revising method for computation of time in Rule 2(a) to retain current language of determining time by City business days. Agreed to retain proposed revision of consecutive days, excluding weekends or holidays.
10. Agreed to add provision to Rule 2(b) that if complainant does not allege specific facts of fraud to toll the statute of limitations, the Ethics Director can return the complaint to the complainant.
11. Agreed to revise Rule 3 to eliminate filing and/or service of documents by facsimile because OECO does not have facsimile machine and to replace reference to facsimile in title with e-mail.
12. Agreed to revise Rule 5(c) to permit Deputy Director of OECO to provide assistance or information to persons seeking to file a complaint.
13. Discussed whether to revise Rule 5(d) to permit OECO to confirm oral request by Respondent for service of complaint by e-mail or other means. Agreed to retain current proposed revision requiring Respondent to request in writing alternative means of service of complaint.
14. Agreed to further revise provision in Rule 5(d) regarding delay in service to provide that OECO Director will inform Complaints Committee at the next scheduled Complaints Committee meeting of a decision to delay service and the Complaints Committee may determine to reverse decision to delay service.
15. Agreed to further revise Rule 5(e) to retain current language that complaints received 15 days before an election will be returned to the complainant and add a new provision that the date of filing of any complaint returned and refiled after the election will revert back to date of the original filing.
16. Agreed to further revise Rule 6(d) option number 3 to remove phrase “if applicable (Rule 8(a),” so option 3 will now state “(3) prepare it for Complaints Committee consideration.”

17. Agreed to change “dismissal” to “withdrawal” in sentence in Rule 7 setting forth requirements of request for withdrawal of complaint by complainant and change “acknowledged” before a notary public to “sworn” before a notary public.
18. Agreed to revise provision in Rule 9(a) regarding confidentiality of hotline tips to comply with the Public Records requirement of disclosure upon finding of probable cause or dismissal of complaint. Discussed whether to add “or complaints” at end of paragraph, but decided to leave proposed revision as is.
19. Agreed to further revise Rule 10(c) to include requirement that Investigator must resign as Investigator if he or she files a complaint with the Ethics Commission regarding additional facts discovered during the course of the investigation.
20. Agreed to further revise Rule 10(a) to include additional prohibition of Investigator from serving on Complaints Committee at time of probable cause vote.
21. Agreed to further revise Rule 12(f)(3) to require Hearing Panel to give findings of fact by hearing officer deference and confirm that hearing officer’s findings of fact cannot be overturned unless findings of fact are not supported by competent substantial evidence.
22. Agreed to further revise Rules 14(c) & (d) to allow Ethics Commission member to consider truth of factual allegations in ruling on a motion to disqualify him or her from the proceeding(s).
23. Agreed to further revise Rule 11(b)(3) to allow Respondent 14 days instead of 10 days to respond to report by Special Ethics Counsel.
24. Agreed to further revise Rule 12(b) to delete provision that consideration of Motion to Dismiss be done in Executive Session.

Following discussion of the specific provisions denoted above, Mr. Rogan moved to adopt the changes to the Complaint Procedures agreed upon by the Complaints Committee members at this meeting and recommend these changes to the entire Ethics Commission. Motion seconded by Ms. Schmitt and Mr. Hartley. Motion passed unanimously.

Chair Hartley requested public comment, but no public comment was provided.

Adjourn:

The meeting adjourned at 6:37 p.m.

Kirby G. Oberdorfer

Kirby Oberdorfer, Ethics Deputy Director

10-25-2017

Date of Approval

This is a summary of the meeting and is not a verbatim transcription. A recording is available at the Ethics Commission web site at [http://www.coj.net/departments/ethics-commission/notices,-agendas---minutes-\(1\).aspx](http://www.coj.net/departments/ethics-commission/notices,-agendas---minutes-(1).aspx).