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**ETHICS COMMISSION
COMPLAINTS COMMITTEE**

MINUTES

April 17, 2017

Lynwood Roberts Room
City Hall

The meeting was called to order at 4:15 p.m. by Mr. John Hartley, Chair of the Complaints Committee. A quorum for the meeting was established. Attendees: Brian Aull, Joseph Rogan, and Ellen Schmitt. Others in attendance: Ywana Allen, Chair of the Ethics Commission; Carla Miller, Director of the Office of Ethics, Compliance and Oversight (OECO); Kirby Oberdorfer, Deputy Director of the OECO; Cherry Shaw Pollock, Office of General Counsel (OGC); and Deborah Melvin, Executive Assistant of the OECO.

New Business:

The meeting began with the attendees introducing themselves for the record. Mr. Hartley introduced the agenda item regarding proposed revisions to the Ethics Commission Complaint Procedures and requested Mr. Rogan to provide an update on this issue.

Mr. Rogan advised he has drafted numerous proposed changes to the Ethics Commission Complaint Procedures ("EC Complaint Procedures") and requested input from the Complaints Committee on the process for adjudicating ethics complaints in a final hearing if the Ethics Commission were to find probable cause existed to support a potential violation of the ethics code. Mr. Rogan and Ms. Miller provided a brief summary of the current process for adjudication of ethics complaints in the EC Complaint Procedures, as well as a challenge to the complaint procedures of the West Palm Beach Ethics Commission by a person against whom an ethics complaint was filed. The person facing the ethics complaint challenged the West Palm Beach Ethics Commission's procedures for processing complaints because the Ethics Commission members participated in both the finding of probable cause of a potential ethics violation and the adjudication of merits of the ethics complaint.

After providing background information, Mr. Rogan requested the Complaints Committee specifically provide input on the following areas for the adjudication of complaints: (1) the composition of the Ethics Commission for the initial determination of probable cause and composition of the final hearing to adjudicate the merits of the ethics complaint and (2) the procedure for the final hearing. Mr. Rogan summarized the complaint adjudication process utilized by the Florida Elections Commission and the Judicial Qualifications Commission, and recommended that the Ethics Commission be divided into two separate panels: (1) one panel comprised of the Complaints Committee members to determine probable cause during the investigation phase and (2) a separate panel comprised of the remainder of the Ethics

Commission members to serve during the final hearing on the adjudication of an ethics complaint. Ms. Miller advised that other Ethics Commissions in the United States utilize the same process of dividing into one panel for the investigatory phase and a separate panel for the adjudicatory hearing phase.

The Complaints Committee then extensively discussed the appearance of conflicts by the Ethics Commission members if all members participated in the initial hearing to determine probable cause for an ethics complaint and later also adjudicated the same complaint during the formal hearing. The Complaints Committee also discussed the structure of the Ethics Commission for all phases of the complaints process.

Following discussion, the Complaints Committee and Ms. Miller concurred with Mr. Rogan's recommendation to separate the Ethics Commission into an investigation panel that would determine probable cause for an ethics complaint and a separate hearing panel that would adjudicate the ethics complaint during the final hearing if probable cause were established for a violation of the Ethics Code.

The Complaints Committee then discussed the process for the final hearing to adjudicate an ethics complaint and whether the Ethics Commission should serve as the adjudicating body or refer the final hearing to a third-party hearing officer. Mr. Rogan explained the process for the final hearing in the current Ethics Commission Complaint Procedures. The Complaints Committee determined that the hearing panel could vote in each case to adjudicate the complaint during the final hearing, refer the final hearing to a third-party hearing officer, or permit the person responding to an ethics complaint to choose a formal, evidentiary hearing versus an informal hearing, at which point the Ethics Commission could decide whether the hearing panel or a third-party should adjudicate the complaint during the final hearing.

Mr. Rogan then advised he would draft the revisions to the current Ethics Commission Complaint Procedures agreed upon by the Complaints Committee, including separating the Ethics Commission into one panel to determine probable cause during the investigation phase and a separate panel to serve during the final hearing adjudicating an ethics complaint, and the process for the final hearing.

Additionally, the Complaints Committee addressed the process for the Director of the OEEO to dismiss complaints alleging issues for which the Ethics Commission does not have jurisdiction. The Complaints Committee discussed changing the process for dismissal of complaints to streamline the procedure to eliminate duplicate meetings of the Complaints Committee and full Ethics Commission. The Complaints Committee agreed to amend the dismissal process in the EC Complaint Procedures to designate the Complaints Committee as the final decision maker regarding dismissals of all complaints prior to the determination of probable cause. Ms. Miller suggested that if the Complaints Committee was the final decision maker for dismissals, the Ethics Commission probably need not add a process for the Director of the OEEO to dismiss complaints for lack of jurisdiction.

As the final matter, the Complaints Committee discussed whether a diversion or mediation process should be developed to resolve complaints received by the OEEO or Ethics Commission,

per Ms. Miller's recommendation, including a potential process for obtaining approval for diversion or mediation of issues.

Adjourn:

The meeting adjourned at 5:04 p.m.

Kirby Oberdorfer
Deputy Director
Office of Ethics, Compliance and Oversight
/dm

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).