

# **MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST**

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# **MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST**

## RULES OF PROCEDURE

### **SECTION A. GENERAL RULES**

#### 1.1 Purpose and Construction of Rules

a) These rules are adopted for the following purposes:

- 1) To establish and explain the practice and procedures followed by the Commission and its employees in the performance of their duties under the law; and
- 2) To provide specific guidance necessary to encourage and ensure full compliance with all laws and duties administered and enforced by the Commission.

b) These rules should always be construed in a manner consistent with all applicable constitutional and statutory requirements.

#### 1.2 Authority to Adopt Rules

These rules are adopted under the authority granted by the Commission under Chapter 2, Article LXXVIII of the Code of Miami-Dade County and by any other law administered and enforced by the Ethics Commission that establishes the Commission's authority to adopt rules.

#### 1.3 Jurisdiction

The jurisdiction of the Ethics Commission shall extend to any person required to comply with the Miami-Dade Conflict of Interest and Code of Ethics Ordinance, the Community Councils Conflict of Interest Ordinance, the Ethical Campaign Practices Ordinance, the Citizens' Bill of Rights, municipal ethics ordinances, and any other County or municipal provisions that authorize the Ethics Commission to exercise its jurisdiction. (Art. LXXVIII, Sec. 2-1068, M-D County Code)

#### 1.4 Computation of Time

This section states how to compute a period of time prescribed or allowed by this section, by any order of the Ethics Commission or by any applicable ordinance.

a) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would be a Saturday, Sunday, or a legal holiday, the period is extended until the next day that is not a Saturday, Sunday, or legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the offices are closed for a holiday.

b) Except where otherwise noted herein, a document may be deemed to be filed or served when it is deposited with the United States Postal Service, properly addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.

c) A document filed or served by the delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark.

## **SECTION B. ADVISORY OPINIONS**

### 2.1 Subject of an Advisory Opinion

a) The Commission will issue a written advisory opinion on the following laws to a person qualified to make a request under 2.1 of this section (relating to Persons Eligible to Receive an Advisory Opinion) (Art. LXXVIII, Sec. 2-1072(a-b), M-D County Code):

- 1) Section 2-11.1 (Conflict of Interest and Code of Ethics Ordinance) of the Code of Miami-Dade County
- 2) Section 20-45 (Community Councils-Conflict of Interest)
- 3) Section 2-11.1.1 (Ethical Campaign Practices Ordinance)
- 4) The Citizens' Bill of Rights
- 5) Municipal Ethics Ordinances
- 6) Any other County or municipal provisions that authorize the Ethics Commission to exercise its jurisdiction.

b) The Commission may also opine on whether particular conduct may result in a breach of the public trust and/or an appearance of impropriety.

c) The Commission will not issue an advisory opinion that concerns the subject matter of pending litigation known to the Commission.

### 2.2 Persons Eligible to Receive An Advisory Opinion

A person who is subject to any of the provisions listed in 2.1(a) of this section may request an opinion regarding the interpretation or application of any of the provisions under the Commission's jurisdiction to himself or herself.

### 2.3 Request for an Advisory Opinion

a) A request for an advisory opinion shall describe an actual and specific factual situation regarding the requestor's prospective conduct. The request must provide sufficient detail to permit the Commission to provide a response to the request.

b) A request for an advisory opinion shall be in writing. A written request may be mailed, hand-delivered, emailed, or faxed to the Commission at the Commission office.

c) A request may be made by any person regarding the applicability or interpretation of a particular provision as it applies to his/her prospective conduct. (Art. LXXVII, Sec. 2-1074, (y), Miami-Dade County Code)

## 2.4 Review and Processing of Advisory Opinions

- a) Upon receipt of a request for an advisory opinion, the Executive Director will determine whether the request concerns a matter under the Commission's jurisdiction and is made by a person eligible to receive an advisory opinion.
- b) If there is sufficient precedent on which to base an opinion, the Ethics Commission staff will assign an INQ number and issue the informal opinion without bringing the matter before the Ethics Commission.
- c) If the Executive Director determines that there is insufficient precedent or that the request is of great public importance, an RQO number will be assigned and staff will draft a recommended opinion to present to the Ethics Commission for ratification.

## 2.5 Time Period

RQO requests shall be considered at the next scheduled Ethics Commission meeting if possible. Items not heard at that meeting will be considered on the next meeting agenda. Summaries of all INQs given by Ethics Commission staff shall be presented at the Ethics Commission's regular meetings.

## 2.6 Publication of Advisory Opinions

Each advisory opinion issued by the Commission shall be numbered, dated and published on the Ethics Commission's website. (Art. LXXVIII, Sec. 2-1074(y), M-D County Code)

## 2.7 Legal Effect

An advisory opinion, until amended or revoked, shall be binding on the conduct of the requester unless material facts were omitted or misstated in the request. (Art. LXXVIII, Sec. 2-1074(y), M-D County Code)

## 2.8 Disqualification of Commissioners

- a) Commission members shall be disqualified from voting on an RQO for bias, prejudice, or interest. Disqualification may be raised by the Requester, Staff Attorney or by any Commission member.
- b) Unless good cause is shown, all motions for disqualification shall be filed with the Commission at least five (5) days prior to the hearing at which the Commissioner is expected to participate. The motion shall be accompanied by an affidavit stating the particular grounds.
- c) Unless denied as untimely, the motion shall be ruled on by the Commissioner whose disqualification is sought; the ruling shall be based on the legal sufficiency of the motion and affidavit. If the motion and affidavit are found legally sufficient, the member shall disqualify himself or herself.

d) Any Commissioner may recuse himself or herself, where to the Commissioner's own knowledge any of the grounds stated in section (a) above exist. The failure of a Commissioner to recuse himself or herself shall not be assignable as error or subject to review.

### 2.9 Ex-Parte Communications

a) A Commissioner shall not initiate any *ex parte* communication<sup>1</sup> relative to the merits of a pending RQO, nor consider any *ex parte* communication by

1) A public employee or official engaged in the matter;

2) The Requester or any person who directly or indirectly would have a substantial interest in the proposed action of the Commission or his or her counsel; or

(This subsection shall not apply to advisory Commission staff and shall not prohibit Commissioners who are contacted by any of the above persons from referring them to Commission staff.)

b) A Commissioner who receives such *ex parte* communication shall place on the record of the matter all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party, including the Advocate, desiring to rebut the *ex parte* communication shall be allowed to do so, if a request for the opportunity for rebuttal is made within ten (10) days after notice of the communication.

## **SECTION C. COMPLAINTS - GENERAL RULES**

### 3.1 Scope of Section

This section applies to sworn Complaint proceedings before the Commission. This section is intended to more clearly define the procedure required by the ordinance and shall be construed to ensure the fair and expeditious determination of a sworn Complaint.

### 3.2 Subject Matter of a Sworn Complaint

a) The Ethics Commission may only consider Complaints concerning the following:

1) Section 2-11.1 (The Conflict of Interest and Code of Ethics Ordinance) of the Code of Miami-Dade County

2) Section 20-45 (Community Councils-Conflict of Interest)

3) Section 2-11.1.1 (Ethical Campaign Practices Ordinance)

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<sup>1</sup> An *ex parte* communication is defined as a private communication regarding a disputed matter without the party(ies) being present.

- 4) Part 1(A), Constitutional Amendment and Charter (The Citizens' Bill of Rights)
  - 5) Municipal Ethics Ordinances
  - 6) Any other County or municipal provisions that authorize the Ethics Commission to exercise its jurisdiction.
- b) The Commission will not consider a Complaint regarding
- 1) An allegation involving a matter outside of the jurisdiction of the Ethics Commission;
  - 2) An allegation based on facts that occurred more than three (3) years before the date the sworn Complaint is filed. (Art. LXXVIII, Sec. 2-1074(x), M-D County Code)
- c) Where the allegations of the Complaint 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 limitation is tolled until the termination of said personnel proceeding or the exhaustion of administrative remedies..
- d) When a municipal Code of Ethics ordinance, Conflict of Interest ordinance, or Lobbyist Registration and Reporting Ordinance provides for a municipal administrative remedy, a Complainant may be required to exhaust his or her municipal administrative remedies prior to filing a written Complaint with the Ethics Commission. (Art. LXXVIII, Sec. 2-1074(v), M-D County Code)
- e) Where an employee of Miami-Dade County or a municipality within Miami-Dade County is alleged to have violated a provision within the jurisdiction of the Ethics Commission that is based upon the same set of facts that are subject to an ongoing disciplinary action initiated by Miami-Dade County or a municipality, the Ethics Commission shall stay consideration of a Complaint until the conclusion of the personnel proceeding. (Art. LXXVIII, Sec. 21074(w), M-D County Code)

### 3.3 Confidentiality

- a) Except as otherwise provided in these rules, the Complaint itself and all staff and Commission activities, proceedings and documents related to the Complaint shall be confidential until either:
- 1) Confidentiality is waived in writing by the Respondent;
  - 2) A determination of probable cause is made;
  - 3) The Commission orders the Complaint dismissed; or
  - 4) The Commission issues a public report or orders a public hearing.

When confidentiality is waived, the Commission orders the Complaint dismissed, probable cause is found, or the Commission orders a public report or public hearing, all materials related to the Complaint shall become public records available to the public as provided in Chapter 119, Florida Statutes except to the extent the materials are otherwise exempted from disclosure under the public records law.

b) For purposes of this rule, the Commission shall be deemed to have ordered a dismissal of the Complaint, found probable cause, issued a public report, or ordered a public hearing at the time the action is taken at a public meeting of the Ethics Commission.

c) The confidentiality provided by this rule shall not prohibit the Commission or its staff from advising the Respondent or the Complainant about the status of the Complaint proceeding.

### 3.4 Press Inquiries

All press inquiries regarding a pending Complaint should be referred to the Executive Director. Prior to a finding of probable cause, no probable cause, or a dismissal of the Complaint, the Ethics Commission staff is prohibited from confirming or denying the existence of any Complaint regarding any person or department.

### 3.5 Filing Fees

The Ethics Commission may impose a filing fee on each Complaint with the discretion to waive it upon a finding of indigency based on an affidavit filed by the Complainant. (Art. LXXVIII, Sec. 11072(e), M-D County Code)

### 3.6 Frivolous or Groundless Complaints

This rule is not intended to deter or otherwise discourage the rights of persons to file complaints with the Ethics Commission. In any case where the Ethics Commission determines that the original complainant filed a frivolous or groundless Complaint, as defined by Section 57.105, Florida Statutes, the Ethics Commission shall order the original complainant to pay any costs and attorney's fees incurred by the Ethics Commission and/or the original respondent (petitioner).

A Verified Petition for Costs and Attorney's Fees must be filed with the Ethics Commission within thirty (30) days of the final disposition of a complaint. Final disposition refers to the signed public report and/or final order on the originally filed complaint. The petition must state with particularity the facts and grounds for entitlement to costs and attorney's fees and the amount of the costs and attorney's fees expended by or on behalf of the petitioner.

A copy of the petition shall be forwarded by Ethics Commission Staff to the original complainant within ten (10) business days of receipt via certified mail, return receipt requested and, if available, via electronic mail.

A hearing will be held within sixty (60) days of receipt of the petition, unless extended for good cause. In accordance with the definition under Florida Statute 57.105 (l), the purpose of the hearing is to determine, by a preponderance of the evidence, whether the original complainant knew or should

have known that the complaint filed was: (a) not supported by material facts; or, (b) would not be supported by the application of ordinances under the Ethics Commission's jurisdiction to those material facts. The petitioner has the burden of proving entitlement to costs and attorney's fees. In making its determination, the Ethics Commission may consider: all material and relevant evidence; legal sufficiency and/or probable cause determinations, investigative reports or other documents filed or produced in connection with the complaint; all laws, ordinances, rules, regulations, policies and opinions related to the complaint; the original complainant's withdrawal of the complaint; the original complainant's legal representation and/or lack of familiarity with ordinances within the Ethics Commission's jurisdiction.

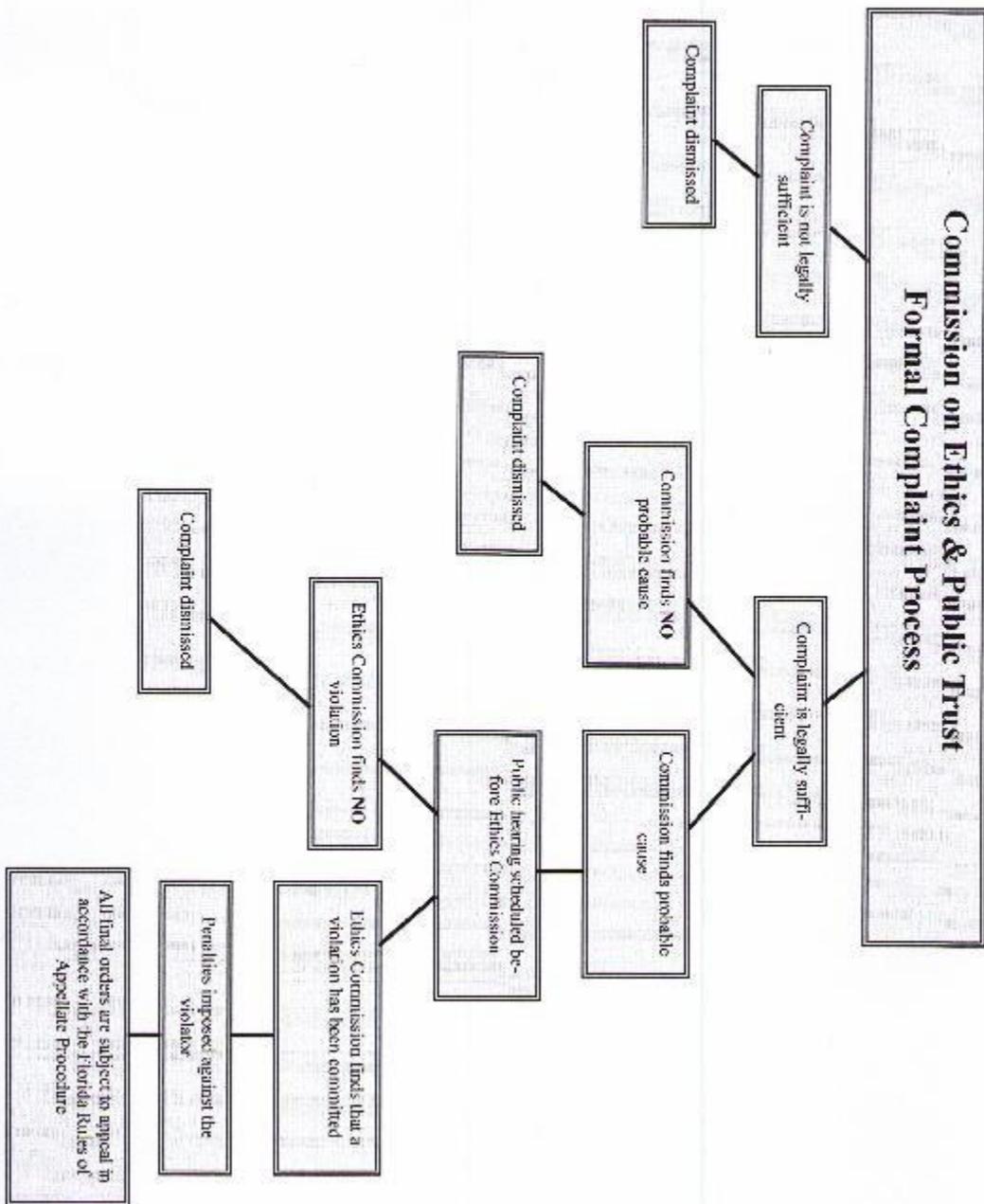
At the conclusion of the hearing, the Ethics Commission will direct the General Counsel or designee to prepare an order incorporating its findings and conclusion and either granting or denying the petition. Said Order shall be forwarded in the same manner as provided in Rule 4.12 (h).

### 3.7 Intentional or Unintentional Violation

The Ethics Commission shall make a determination of an intentional or unintentional violation in every case where the Respondent is found to have committed a violation of an ordinance under the Ethics Commission's jurisdiction. In cases where the Respondent is found to have committed an intentional violation, the Respondent may be assessed actual costs, in an amount not to exceed five hundred dollars (\$500.00) per violation and enhanced fines as prescribed by Sec. 2-11.1(cc)(1).

### 3.8 Good Cause Extensions

The time period for determination of legal sufficiency and probable cause in Complaint proceedings may be extended for good cause. "Good Cause" shall include, but not be limited to, failure of the Ethics Commission to hold a regular meeting within the time frame required for a legal sufficiency or probable cause determination; a lack of quorum to make a determination; and a timely filed motion for continuance or request for extension of time filed by the Advocate or the Respondent.



## **SECTION D. PRELIMINARY INVESTIGATIONS**

### 4.1 Staff Procedures Upon Receipt of a Complaint

- a) Upon receipt of a sworn Complaint, staff shall stamp on the face thereof the date on which the Complaint was received in the Commission office. Each Complaint received shall be assigned a Complaint number which shall be entered on the Complaint itself. Any document related to the Complaint shall be entered into the Complaint file. Within five (5) business days of receipt of the Complaint, staff shall send to the Complainant, by email, regular US mail or both, written confirmation of the receipt of the Complaint, the number assigned to the Complaint, and a form explaining Commission procedures regarding legal sufficiency and probable cause determinations, investigation, and notice of hearing and final disposition of the Complaint.
- b) Upon a written Complaint (except for a Complaint filed by the Inspector General, the Advocate or the State Attorney) which alleges the elements of a violation within the Ethics Commission's jurisdiction and is executed on the proper Complaint form and based substantially upon the personal knowledge of the Complainant and signed under oath or affirmation by the complaining person, the Ethics Commission shall forward a copy of the Complaint to the Respondent within thirty days (30) of receipt of the Complaint. Any amendments or additional material provided by the Complainant shall also be transmitted to the Respondent. (Art. LXXVIII, Sec. 2-1074(a)(2), M-D County Code)
- c) Upon a written Complaint filed by the Inspector General, the Advocate or the State Attorney which alleges a violation within the jurisdiction of the Ethics Commission, the Ethics Commission shall forward a copy of the Complaint to the Respondent within five (5) days after receipt of the Complaint. Any amendments or additional material provided by the Complainant shall also be transmitted to the Respondent. (Art. LXVIII, Sec. 2-1074(a)(1), M D County Code)

### 4.2 Determination of Legal Sufficiency and Order of Preliminary Investigation

- a) After the Complaint has been reviewed and found to be in the proper form, the Complaint shall be reviewed by the General Counsel (or his/her designee) in order to determine whether the Commission has jurisdiction over the matter. Complaints need not be as precise as would be required by the rules of civil procedure and shall be deemed sufficient if the Complainant under oath upon knowledge or belief alleges matters, which, if true, would constitute a violation of a provision under the Ethics Commission's jurisdiction.
- b) General Counsel shall prepare a memorandum regarding the legal sufficiency of all Complaints within sixty (60) days of the filing of the Complaint. If General Counsel finds the Complaint to be legally sufficient, it will be investigated and reviewed by the Advocate for probable cause. If General Counsel finds the Complaint to be legally insufficient, the recommendation to dismiss the Complaint must be presented to the Commission. The Commission shall meet in executive session and may find the Complaint to be legally insufficient, dismiss it and notify the Complainant and Respondent, in the manner provided in Section 4.12(h)(2), that no investigation will be made, or may take such other action as may be appropriate. In any case where a Complaint is found legally insufficient and

dismissed, the public report and order dismissing the Complaint together with the Complaint itself and all documents related thereto shall become a public record. (Art. LXXVIII, Sec. 21074(b), M-D County Code)

#### 4.3 Withdrawal of Complaints

After a Complaint has been filed with the Commission, the Commission may permit the Complainant to withdraw the Complaint only for good cause shown. Withdrawal shall be requested in writing and signed by the Complainant(s). "Good Cause" shall be determined based upon the legal sufficiency or insufficiency of the Complaint to allege a violation of an ordinance under the Commission's jurisdiction, the stage of the disposition of the Complaint arrived at before the request was received, and the reasons given by the Complainant for wishing to withdraw the Complaint. If withdrawal is permitted, the Commission shall order the Complaint dismissed.

#### 4.4 Stay of Proceedings

The Respondent, the Advocate, the State Attorney's Office, or the United States Attorney's Office may move for a stay of the proceedings at any time prior to the commencement of a public hearing regarding a matter before the Ethics Commission, if the Respondent is the subject of an active criminal investigation or has been charged by information or indictment with charges arising out of the same factual allegations contained in the Complaint.

#### 4.5 Delegation of Authority

The Commission hereby delegates to its investigators the authority to administer oaths and affirmations and authorizes these employees to serve any subpoena issued under the Commission's authority. (Art. LXXVIII, Sec. 2-1074(g), M-D County Code)

#### 4.6 Subpoenas During Preliminary Investigation

Upon recommendation of the Executive Director, General Counsel, or the Advocate, the Ethics Commission may, by 2/3rds vote, authorize the issuance of subpoenas or subpoenas *duces tecum*. (Art. LXXVIII, Sec. 2-1074(g), M-D Code) Each subpoena shall be signed by the General Counsel or other member authorized by the Commission and shall state the person, documents, or other things to be subpoenaed. Each subpoena shall name the person before whom the witness is to give testimony and shall state in general terms the subject matter of the testimony to be elicited. If documents or other things are to be produced, the subpoena shall describe the same with as much specificity as reasonably practicable. The subpoena shall state clearly on its face that it is issued by the Commission on Ethics and Public Trust in accordance with its authority to investigate violations within its jurisdiction. Such subpoenas shall be issued for investigative purposes only, and neither the Complainant, the Respondent, nor their counsel shall be entitled to attend the investigative proceeding at which the witness is to give a sworn statement unless the Complainant or the Respondent is the person subpoenaed. An emergency subpoena may be issued by the Chair who shall notify the Ethics Commission at the next scheduled meeting.

#### 4.7 Commencement of Investigations

- a) A preliminary investigation shall be undertaken of every legally sufficient Complaint over which the Ethics Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred.
- b) Investigations shall be conducted by Ethics Commission staff under the direction of the Advocate and/or Executive Director. (Art. LXXVIII, Sec. 2-1074(c), M-D County Code)
- c) Investigations shall be limited to the allegations in the Complaint, but shall include an investigation of all facts and persons materially related to the Complaint at issue. (Art. LXXVIII, Sec. 2-1074(c), M-D County Code)

#### 4.8 Wrongful Acts Unrelated to the Complaint

If during the course of an investigation, evidence of a wrongful act not materially related to the Complaint at issue is discovered by an investigator, such evidence shall be reported to the Executive Director and Advocate. Upon receipt of the report containing evidence of a wrongful act not materially related to the Complaint at issue, the Advocate and/or Executive Director shall either initiate further investigation, file an Ethics Complaint, or forward evidence of any other wrongful act to the appropriate disciplinary or law enforcement official as soon as practicable following the conclusion of the preliminary investigation.

#### 4.9 Conduct of Investigators during Preliminary Investigation

- a) Investigator Contact with Potential Witnesses and Respondent. The investigator shall inform the person being interviewed of the confidential nature of the investigation and of the Complaint, unless the Respondent has waived confidentiality.
- b) Investigator to be Impartial. An investigator shall be impartial and unbiased in the conduct of the preliminary investigation. An investigator shall collect all evidence materially related to the allegations of the Complaint, whether such evidence tends to prove or disprove the allegations. If an investigator feels that for any reason, he or she cannot be impartial or unbiased during the preliminary investigation, then such investigator shall so notify the Advocate and/or Executive Director and shall immediately discontinue working the investigation.
- c) Investigator's Report. Upon completion of the preliminary investigation, the investigator shall prepare a report for presentation to the Advocate and/or Executive Director. The report shall contain a synopsis of all pertinent information obtained through interview of witnesses, documentary evidence, or other sources that support the investigator's findings and recommendations.

#### 4.10 Investigation of Facts and Parties Materially Related to Complaint

The Ethics Commission has the duty to investigate all facts and parties materially related to the Complaint at issue.

a) Facts materially related to the Complaint include facts which tend to show

- 1) A separate violation of a provision under the Ethics Commission's jurisdiction by a Respondent other than as alleged in the Complaint and consisting of separate instances of the same or similar conduct by Respondent as alleged in the Complaint; or
- 2) A separate violation of a provision under the Ethics Commission's jurisdiction by the Respondent from that alleged in the Complaint which arises out of or in connection with the allegations in the Complaint.

Where facts materially related to the Complaint are discovered by the investigator during the course of the investigation, the Advocate and/or Executive Director shall order an investigation of them and the investigator shall include them in the investigative report. The Advocate and/or the Executive Director may recommend, and the Ethics Commission may order a public hearing as to those violations of an ordinance under its jurisdiction. From that point in the proceedings until final disposition of the Complaint, such facts shall be treated as if they were initially alleged in the Complaint at issue.

b) A party materially related to the Complaint means

- 1) Any other person within the same agency as the Respondent who has engaged in the same conduct as that alleged against the Respondent in the Complaint at issue; or
- 2) Any other person who has participated with the Respondent in the alleged violations as a conspirator or an aider and abettor.

#### 4.11 Counsel

a) Respondent. Respondent may appear on his own behalf or may be represented by a lawyer. All notices and communications shall be sent to Respondent directly unless Respondent is represented by a lawyer in which case, all notices and communications shall be made through the Respondent's lawyer. (Art. LXXVIII, Sec. 2-1074(d)(3), M-D County Code)

b) Advocate. The Advocate presenting the matter before the Commission shall be the legal counsel retained by the Ethics Commission to serve as Advocate. (Art. LXXVIII, Sec. 2 1074 (d)(2), M-D County Code) Should the staff Advocate have a conflict of interest, the Ethics Commission may retain special counsel to serve as the Advocate in any matter.

c) Complainant. To the limited extent the Complainant is entitled to participate in or observe Ethics Commission proceedings, the Complainant may be represented by legal counsel. All notices and communications to a Complainant represented by counsel shall be made through Complainant's lawyer. (Art. LXXVIII, Sec. 2-1074(d)(4), M-D County Code)

d) Appearances. Counsel must file a notice of appearance with the Commission.

#### 4.12 Probable Cause Determination

a) Advocate's recommendation. The Advocate shall review the investigator's report and shall make a written recommendation to the Commission regarding probable cause within sixty (60) days of the filing of the Complaint. (Art. LXXVIII, Sec. 2-1074(b), M-D County Code)

b) Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission to believe that a violation of any County or municipal law or provision over which the Commission has jurisdiction, has occurred.

c) The Respondent shall be given not less than ten (10) days from the date of mailing of the Advocate's recommendation to file with the Commission a written response to the recommendation. The Respondent may also file a motion in opposition to the proceeding (including motions to dismiss, to strike, and for a more definite statement) upon receipt of the Advocate's probable cause recommendation. Respondent's motions must be received by the Advocate no later than 72 hours prior to the scheduled hearing, excluding weekends and holidays.

d) Notice of Hearing and Right to Attend - Respondent. The Respondent and his/her counsel shall be permitted to attend the hearing at which the probable cause determination is made. Notice of the hearing shall be sent to the Respondent at least ten (10) days before the hearing. This time period may be shortened with the consent of the Respondent, or without the consent of the Respondent when the passage of time could reasonably be expected to render moot the ultimate disposition of the matter by the Commission so long as reasonable notice under the circumstances is given.

e) Notice of Hearing and Right to Attend - Complainant. A Complainant, who is personally aggrieved by the alleged violation, shall be permitted to attend the hearing at which the probable cause determination is made. Complainant will not have the right to speak during the hearing. A "personally aggrieved complainant" is one who has personally suffered loss or detriment, directly or indirectly, as a result of Respondent's alleged violation.

Examples of Complainants who may be considered personally aggrieved include the following:

- An employee who files a complaint alleging whistle-blower retaliation.
- A candidate who files a complaint alleging a violation of the campaign practices ordinances affecting his/her own campaign.
- A bidder who files a complaint alleging a Cone of Silence violation involving the contract or proposal sought by the bidder.

Examples of Complainants who may not be considered personally aggrieved include the following:

- A supervisor who files a complaint against a subordinate.

- A citizen activist who files a complaint against an employee/elected official for an alleged violation that does not affect the citizen activist in a way distinct from the general public.
- A political action committee that files a complaint against an elected official that does not affect the committee in a way distinct from the general public.

Notice of the hearing shall be sent to the personally aggrieved complainant at the same time as notice is sent to the Respondent under subsection (d). At the time the legal sufficiency determination is made by COE staff, a determination of whether the Complainant is personally aggrieved will be made.

f) Scope of Probable Cause Determination. The Respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Commission, based upon the investigator's report, before the probable cause determination. The Chair of the Commission may impose reasonable time limits on presentations made by the Respondent and Advocate.

g) Probable Cause Determination. At the meeting to determine probable cause, the Commission may continue its determination to allow further investigation; may order the issuance of a public report of its investigation if it finds no probable cause to believe that a violation of the Conflict of Interest and Code of Ethics ordinance or any other provisions under its jurisdiction has occurred; or may take such other action as it deems necessary to resolve the Complaint consistent with due process of law. In making its determination, the Commission may consider

- 1) the sufficiency of the evidence against the Respondent as contained in the Complaint and the Advocate's probable cause determination;
- 2) the admissions and other stipulations of the Respondent, if any;
- 3) the nature and circumstances of the Respondent's actions;
- 4) the expense of further proceedings; and
- 5) such other factors as it deems material to its decision.

If the Commission orders a public hearing of the Complaint, the Commission shall determine what charges shall be at issue for the hearing.

h) Notice of Final Decision to Complainant and Respondent.

1) Upon a finding of Probable Cause by the Ethics Commission, Complainant and Respondent shall be notified of such finding in writing within (5) business days. No written notice need be sent to a Complainant or Respondent present at the meeting when the finding of Probable Cause was made.

2) Upon a finding of No Probable Cause, No Legal Sufficiency or any other Dismissal, Commission staff shall draft a Final Order pertaining to that complaint. The Final

Order shall be signed by the Chairperson of the Ethics Commission (or his/her designee) no later than the next scheduled meeting of the Ethics Commission. Within ten (10) business days of the Final Order being signed by the Chairperson (or his/her designee) a copy shall be filed with the Clerk of the Board, and a copy shall be sent to the Complainant and the Respondent by U.S. Mail and/or e-mail.

#### 4.13 Notification of Public Hearing

Upon the Commission's ordering a public hearing of a Complaint, the Ethics Commission Staff shall so notify the Complainant and the Respondent in writing within (5) business days. The Complainant and the Respondent shall also be provided with a copy of the Advocate's probable cause memorandum no less than (10) business days prior to the hearing.

#### 4.14 Disposition of Matter

Notwithstanding any other provision herein, the Ethics Commission may at its discretion (i) dismiss any Complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (ii) dismiss any Complaint at any stage of disposition and issue a letter of instruction to the Respondent or any other appropriate person where it appears that the violation was inadvertent, unintentional or insubstantial. (Art. LXXVIII, Sec. 2-1074(s), M-D County Code)

#### 4.15 Request for Public Hearing

Upon request submitted to the Ethics Commission in writing, any person whom the Ethics Commission has found probable cause to believe has committed a violation of a provision within its jurisdiction, shall be entitled to a public hearing. Such person shall be deemed to have waived the right if a request is not received within twenty-one (21) days following the mailing of the probable cause notification. The Ethics Commission may on its own motion require a public hearing. (Art. LXXVIII, Sec. 2-1074(b), M-D County Code)

#### 4.16 Default

If a Respondent fails to appear at the public hearing, the Ethics Commission may find the Respondent in default and issue an appropriate final order.

### **SECTION E. PUBLIC HEARINGS**

#### 5.1 Public Hearings

a) Public Hearings may be conducted by the full Commission, a (3) member panel of the Ethics Commission, or a single member designated by vote of the Commission. Proceedings before the Commission shall be governed by all applicable provisions of the Florida Rules of Civil Procedure except where otherwise designated herein. If the hearing is conducted by a single member, he/she shall prepare a report and submit it to the Ethics Commission for ratification.

b) The Public Hearing shall be held within sixty (60) days of the probable cause determination unless extended by the Ethics Commission for good cause. (Art. LXXVIII, Sec. 2-1074(b), M-D Code)

## 5.2 Parties to Public Hearing

The person accused of a violation of an ordinance under the Commission's jurisdiction shall be the only party unless consolidation is granted. The Advocate shall be a full participant in the proceedings and shall present all the evidence relevant to the issue that was discovered during the preliminary investigation and such additional evidence as may be obtained through discovery or further investigation.

## 5.3 Standard of Proof

The standard of proof is clear and convincing evidence – proof which requires more than an preponderance of the evidence but less than proof beyond a reasonable doubt.

## 5.4 Consolidation of Cases

The Ethics Commission may consolidate cases if there are matters which involve identical parties or arise out of related issues of law and fact and if it appears that consolidation would promote the expeditious resolution of the matters and would not unduly prejudice the rights of a party.

## 5.5 Disqualification of Commissioners

Refer to Subsection 2.8 above under Section B, “Advisory Opinions.”

## 5.6 Ex-Parte Communications

Refer to Subsection 2.9 above under Section B, “Advisory Opinions.”

## 5.7 Subpoenas for Discovery

At any time after the Ethics Commission orders a public hearing of the matter, the Ethics Commission may issue subpoenas to effect discovery upon the written request of Respondent or Advocate. The requesting party shall give the name and address of each witness he or she wishes to have deposed and shall describe with particularity those documents or other items that the person wishes to have the witness produce, bring or deliver pursuant to a subpoena *duces tecum*. Parties may also obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. The Chairperson or a member of the Ethics Commission may issue appropriate orders to effectuate the purposes of discovery and to prevent delay. (Art. LXXVIII, Sec. 2-1074(h), MD County Code)

## 5.8 Subpoenas for Public Hearing

The Respondent and the Advocate shall submit to the Executive Director a list of all witnesses he or she wishes to have subpoenaed to attend the hearing and he/she will, in turn, give it to the Ethics Commission. The lists shall include 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 herein. (Art. LXXVIII, Sec. 2-1074(i), M-D Code)

### 5.9 Motions

- a) 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. (Art. LXXVIII, Sec. 2-1074(j)(1), M-D County Code)
- b) The original written motion shall be filed with the Ethics Commission and a copy served on all parties or their attorneys. The Ethics Commission staff shall send a copy of the motion to the Chairperson. (Art. LXXVIII, Sec. 2-1074(j)(2), M-D County Code)
- c) Unless the motion is in opposition to the proceeding, the Chairperson, or a member of the Ethics Commission designated by the Chairperson, shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motions, but it is not required to hold a hearing on a motion in order to rule upon it. (Art. LXXVIII, Sec. 21074(j)(3), M-D County Code)
- d) 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. (Art. LXXVIII, Sec. 2-1074(j)(4), M-D County Code)

### 5.10 Motions in Opposition to a Proceeding

Motions in opposition to a proceeding, including motions to dismiss, to strike, and for a more definite statement, may be filed at any time after the Advocate submits his or her probable cause memorandum and must be filed no later than twenty days (20) after service of the notice of public hearing. Unless waived by the parties, the Ethics Commission shall hold a hearing and rule on the motion. (Art. LXXVIII, Sec. 2-1074(k), M-D County Code)

### 5.11 Motions to Dismiss Filed by Advocate

After probable cause is found and a public hearing is ordered by the Ethics Commission 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 public hearing in good faith. Such a motion shall specifically state the grounds upon which it is made. (Art. LXXVIII, Sec. 2-1074(o), M-D County Code)

### 5.12 Prehearing Conferences

The Chairperson, or a member of the Ethics Commission designated by the Chairperson, may conduct one 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 issues. (Art. LXXVIII, Sec. 2-1074(l), M-D County Code)

### 5.13 Exchange of Witness Lists

Unless otherwise ordered by the Chairperson or a member of the Ethics Commission designated by the Chairperson 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 Chairperson. Names and addresses of witnesses discovered subsequently shall be disclosed to the other party or parties and to the Chairperson 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. (Art. LXXVIII, Sec. 2-1074(m), M-D County Code)

### 5.14 Settlement

- a) The Ethics Commission may enter into a settlement agreement at any stage of the proceedings if it finds it to be just and in the best interest of the citizens of Miami-Dade County.
- b) The Advocate may enter into settlement negotiations but must present all settlement proposals to the Ethics Commission for consideration and approval.

## **SECTION F. ORDER OF PUBLIC HEARING**

### 6.1 Presentation of the Case

The Advocate shall present his or her case first. The Respondent may then present his or her case. Rebuttal evidence may be permitted at the discretion of the Ethics Commission. (Art. LXXVIII, Sec. 21074(n)(1), M-D County Code)

### 6.2 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. The Chair of the Commission may impose reasonable time limits on the opening and closing statements made by each party. (Art. LXXVIII, Sec. 2-1074(n)(2), M-D County Code)

### 6.3 Evidence (Art. LXXVIII, Sec. 2-1074(n)(3), M-D County Code)

- a) Stipulations may be received and are encouraged as to uncontested matters.
- b) Oral evidence shall be taken only on oath or affirmation.
- c) 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 of who first called him or her to testify.
- d) 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 in and of itself to support a finding. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The Ethics Commission 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 person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.

#### 6.4 Transcript of proceedings

The proceedings shall be recorded by recording instruments or by a court reporter. The recording of the proceeding is public record and is available to the Respondent upon request. Respondent may at his or her own expense provide a court reporter or recording instruments. The Ethics Commission may provide a court reporter. No transcript of the proceedings shall be prepared unless requested by the Ethics Commission or 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 Ethics Commission prepare a transcript from recording instruments and the Ethics Commission grants such request, the Respondent shall pay the Ethics Commission the actual cost of transcription. If a court reporter records the proceedings, the court reporter's transcript shall be the official transcript. (Art. LXXVIII, Sec. 2-1074(n)(4), M-D County Code)

#### 6.5 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 Chairperson or a member of the Ethics Commission designated by the Chairperson. 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. (Art. LXXVIII, Sec. 2-1074(n)(5), M-D County Code)

### **SECTION G. APPEALS**

#### 7.1 Appeal of Final Order or Advisory Opinion

Any final order where the Ethics Commission finds that a violation has been committed or any advisory opinion issued by the Ethics Commission shall be subject to review in accordance with the Florida Rules of Appellate Procedure. The Ethics Commission shall provide the index and record on appeal when required by and in accordance with the Florida Rules of Appellate Procedure. (Art. LXXVIII, Sec. 2-1075(a), M-D County Code)

#### 7.2 Fees

- a) A fee may be charged by the Ethics Commission for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction. Such fee may be waived by the Ethics Commission if the party requesting the record is indigent. (Art. LXXVIII, Sec. 2-1075(a), M-D County Code)

b) Costs or fees may not be assessed against the Ethics Commission in any appeal from a final order or advisory opinion issued by the Ethics Commission. (Art. LXXVIII, Sec. 2 1075(b), M-D County Code)

### 7.3 Stay

Unless specifically ordered by the Ethics Commission or by a court of competent jurisdiction, the commencement of an appeal does not suspend or stay a final order or an advisory opinion of the Ethics Commission. The final order or advisory opinion shall remain in effect during the appeals process. (Art. LXXVIII, Sec. 2-1075(c), M-D County Code)

## **SECTION H. PENALTIES**

### 8.1 Imposing of Penalties

Penalties may be imposed by the Ethics Commission after a ratified settlement agreement has been entered into between the Commission and the Respondent or after a public hearing.

### 8.2 Types of Penalties

a) The Ethics Commission may impose the following penalties:

- 1) Letters of Instruction;
- 2) Letters of Reprimand;
- 3) \$500 fine for the first count;
- 4) \$1,000 fine for each additional count;
- 5) \$1,000 fine for the first *intentional* violation;
- 6) \$2,000 fine for each subsequent *intentional* violation
- 7) Investigative costs not to exceed \$500 per count;
- 8) Restitution;

b) In order to impose fines for *intentional* violations, the Ethics Commission must make a finding, after a public hearing, that Respondent acted intentionally in violating a provision under the Ethics Commission's jurisdiction. Alternatively, the Respondent may agree to the imposition of fines for *intentional* violations in a Settlement Agreement.

## **SECTION I. RESTITUTION AND INVESTIGATIVE COSTS**

### 9.1 Scope of Authority

a) The Ethics Commission may order restitution against any person or entity found in violation of the Miami-Dade Conflict of Interest and Code of Ethics ordinance, the Community Council's Conflict

of Interest Ordinance, the Ethical Campaign Practices ordinance, the Citizens' Bill of Rights, municipal ethics ordinances, and any other County or municipal provisions that authorize the Ethics Commission to exercise its jurisdiction.

b) The Ethics Commission may also order the payment of investigative costs not to exceed \$500 (five hundred dollars) per violation.

### 9.2 Definitions

a) Restitution. Amount that a Respondent is made to repay to a person or entity that corresponds to the amount that Respondent obtained as a result of a violation of an ordinance under the jurisdiction of the Ethics Commission.

b) Investigative Costs. The costs of conducting the investigation determined by the amount of hours spent on doing so, not to exceed \$500 (five-hundred dollars) per violation.

c) Covered Person. Any person or entity included in Section 2-11.1(b)(1) through (b)(6)(elected officials, autonomous personnel, quasi-judicial personnel, advisory personnel, departmental personnel and employees) and 2-11.1(w) (immediate family, contractors, vendors and lobbyists) of the Conflict of Interest and Code of Ethics ordinance and any candidate, campaign staff, or third party covered by the Ethical Campaign Practices ordinance and the Election Campaign Financing Trust Fund ordinance.

### 9.3 Restitution Proceedings

a) The Ethics Commission will conduct separate proceedings, where necessary, to determine the amount of restitution.

b) The Advocate will present evidence regarding the appropriate amount of restitution in a particular case. The amount of restitution cannot exceed the financial gain received by the Respondent or a third party as determined by an audit or an investigation.

c) The Respondent may present evidence regarding the present financial resources of the Respondent, the present and potential future earning ability of the defendant, his or her dependents, and such other factors as it deems appropriate.

d) The Respondent may not present evidence regarding the underlying violation.

### 9.4 Burden of Proof

a) The Advocate has the burden of demonstrating the amount of financial gain by the Respondent and/or any third party as a result of the Ethics violation.

b) The Respondent has the burden of demonstrating his or her inability to pay restitution in any matter.

### 9.5 Determination of Restitution and Investigative Costs

a) The Ethics Commission may order restitution for any amount not exceeding the total amount of financial benefit to the Respondent or a third party. The Ethics Commission may not order restitution for prospective financial gain. In making a determination, the Ethics Commission may consider the following factors:

- 1) the severity of the offense;
- 2) the amount of loss suffered by the County or any other person or entity as a result of the Respondent's actions;
- 3) the Respondent's financial circumstances and his or her ability to pay restitution
- 4) any other factors the Ethics Commission deems appropriate

b) Investigative costs shall be calculated by taking the average hourly salary of an Ethics Commission investigator and multiplying it by the number of hours spent working on that particular investigation/complaint not to exceed \$500 (five hundred dollars) per count.

### 9.6 Enforcement Proceedings

a) The Ethics Commission and the Respondent may enter into a payment plan for the amount contained in the final order.

b) The Ethics Commission may make application to any circuit court which shall have jurisdiction to order the violator to comply with the order. Any violator who fails to obey the order may be punished by the court.

c) If the Respondent is an employee under the Ethics Commission's jurisdiction, the Ethics Commission may order the garnishment of his/her wages in order to pay the amount of restitution or investigative costs owed.

## **SECTION J. WHISTLEBLOWER RETALIATION COMPLAINTS**

### 10.1 Scope of Jurisdiction

Pursuant to Ordinance 07-63, the Ethics Commission may conduct investigations of whistleblower retaliation Complaints and prepare findings of fact for the County Mayor.

### 10.2 Persons Covered (Div. 6, Secs. 2-56.28.12, 13, 16, M-D County Code)

a) Any employee or independent contractor who discloses information in a signed and written Complaint regarding any violation or suspected violation of local, state, or federal law that creates and presents a substantial and specific danger to public health, safety, and welfare or any act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds or neglect of duty.

- b) Any employee or independent contractor who is requested to participate in an investigation, hearing, or other inquiry conducted by the County or any state or federal agency with authority to investigate, police, manage, or remedy the situation.
- c) Any employee who refuses to participate in any adverse action prohibited under this section.

### 10.3 Definitions

- a) Adverse personnel action. Discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, reduction in salary, or benefits or any other adverse action.  
(Div. 6, Sec. 2-56.28.12(4), M-D County Code)
- b) Employee. A person who performs services for, and under the control and direction of, the County for wages or other remuneration. (Div. 6, Sec. 2-56.28.12(2), M-D County Code)
- c) Independent Contractor. A person, other than a federal, state, or local government entity, engaged in any business who enters into a contract with the County. (Div. 6, Sec. 256.28.12(3), M-D County Code)

### 10.4 Prohibited Retaliation

Miami-Dade County or any agent or employee may not dismiss, discipline, or take any adverse personnel action against any person for disclosing violations of local, state, or federal law that presents a substantial and specific danger to health, safety, or welfare or any act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or neglect of duty. (Div. 6, Sec. 2-56.28.13, M-D County Code)

### 10.5 Procedures Upon Receipt of Retaliation Complaints

- a) Time Frame for Filing Complaints. Any covered person must file a written Complaint with the Ethics Commission within sixty days (60) of the adverse personnel action. (Div. 6, Sec. 2-56.28.17(4)(a), M-D County Code)
- b) Notification. The Ethics Commission shall acknowledge receipt of the Complaint within ten (10) days and provide copies to the department or employee accused of retaliation.  
(Div. 6, Sec. 2-56.28.17(4)(b), M-D County Code)
- c) Preliminary Investigation. A preliminary investigation and a fact-finding hearing to determine probable cause regarding a violation of Section 2-56.28.17 must be held within sixty (60) days. (Div. 6, Sec. 2-25.28.17(4)(c)(i), M-D County Code)
- d) Final Report. A final fact-finding report regarding a violation of the retaliation section of the whistleblower ordinance must be provided to the accused department or employee within ninety (90) days of receiving the Complaint. The report shall include a recommendation to the County

Mayor regarding any appropriate remedial action as provided in the ordinance. (Div. 6, Sec. 2-25.28.17(4)(c)(ii), M-D County Code)

- e) Violations of Employee Protection Ordinance. Any County employee found to have retaliated against another employee in violation of the Employee Protection Ordinance shall be charged under Sec. 2-56.28.17(5). The COE may impose penalties as provided in the Conflict of Interest ordinance in addition to any other recommended penalties. (Div. 6, Sec. 2-25.28.17(5), M-D County Code)

#### 10.6 Coordination with Other Administrative Proceedings

- a) Hearing Examiner. The Ethics Commission proceedings may be held in lieu of or in addition to the election of review by a hearing examiner. The Ethics Commission fact finding report shall be admissible in any subsequent or related administrative proceeding.
- b) Departmental Review of Personnel Action. The Ethics Commission proceedings may be conducted simultaneously with any departmental review of the adverse personnel action.
- c) Internal Investigation of Whistleblower Actions. The Ethics Commission may stay proceedings until the conclusion of any investigation of the underlying whistleblower allegations by the County Mayor, the Office of Inspector General, or any local, state, or federal agency having jurisdiction over the underlying allegations.

#### 10.7 Remedies and Penalties

- a) Ethics Commission Penalties. The Ethics Commission may impose any penalties provided in Section 2-11.1 for violation of the Conflict of Interest ordinance. The Ethics Commission may recommend penalties, up to and including dismissal, to the County Mayor for any violation of the whistleblower ordinance.
- b) County Mayor:
  - 1) Remedies. The County Mayor may reinstate the employee to his or her former position or an equivalent position or award front pay; reinstate the employee's fringe benefits and seniority or compensate the employee for lost wages, benefits, or other lost remuneration caused by the adverse action. (Div. 6, Sec. 2-56.28.18, M-D County Code)
  - 2) Penalties. The County Mayor may impose discipline, up to and including dismissal, against any person found to have committed retaliation against a person protected by the whistleblower ordinance. (Div. 6, Sec. 2-56.28.17(5), M-D County Code)

## **SECTION K. ETHICAL CAMPAIGN PRACTICES – EXPEDITED PROCESS**

### 11.1 Ethical Campaign Practices Ordinance

The Ethical Campaign Practices Ordinance proscribes candidates and their supporters from certain actions during the campaign. The ordinance contains a mandatory and a voluntary section. The decision to participate in the voluntary section is irrevocable and retroactive from the date of signing to filing to run for a particular office.

### 11.2 General Procedures

a) Time Frame for Expedited Process. The expedited process governs all Complaints regarding the Ethical Campaign Practices ordinance that are filed within fifty (50) days of a primary, special, or general election. The applicable time frame in each section does not include Saturday, Sunday, or any legal holiday. The time frame is not extended for service by mail. (Sec. 2-11.1.1(E), M-D County Code)

b) Ethics Commission (M-D County I.O. No. 2-8)

- 1) The Ethics Commission shall receive copies of the Complaint and the Respondent's response prior to the appointment of a hearing examiner.
- 2) The Ethics Commission may conduct probable cause hearings.
- 3) The Ethics Commission may intervene, after the appointment of a hearing examiner, to make determinations regarding any motion in the case including, but not limited to, motions to dismiss or motions for extension of time.

c) Hearing Examiner

- 1) Qualifications. Retired Judges who have served at least ten (10) years on the bench or attorneys who have been members of the Florida Bar for at ten (10) years or more. Preference shall be given to applicants with local government, hearing officer, or hearing examiner experience.
- 2) Creation of a Hearing Examiner Pool. The Ethics Commission may create a pool of hearing examiners to make probable cause determinations or may use the hearing examiner pool designated by the Clerk of the Board.

d) Form of Complaint

1) Complaint Form. The Ethics Commission may create a specially designed Complaint form for expedited Complaints. The Ethics Commission may collect a filing fee of three hundred and one dollars (\$301) or the prevailing fee for filing circuit court Complaints. The Ethics Commission or the hearing examiner may waive filing fees if the Complainant is indigent.

- 2) The Complaint must include any supporting documentation that should be considered by the hearing examiner or the Ethics Commission regarding the matter including affidavits, pictures and audio or video recordings. Any material that is provided from a website must include information regarding the source of the material including the website address.

e) Complainant Responsibilities

- 1) The Complainant must provide all required documentation as provided herein with his or her Complaint form.
- 2) The Complainant may provide oral argument, at the discretion of the hearing examiner or the Ethics Commission, at probable cause hearings for Complaints filed within ten days (10) of the election.
- 3) The Complainant does not have the right to file exceptions or appeal the probable cause recommendation of the hearing examiner.

f) Advocate Responsibilities

- 1) The Advocate may conduct a preliminary investigation of any Complaints filed under this section.
- 2) The Chair of the Ethics Commission may authorize subpoenas for witnesses and documents during the preliminary investigation of an expedited Complaint.
- 3) The Advocate must provide the hearing examiner with a probable cause memorandum for any Complaint filed within twenty days (20) of the election, unless good cause is shown as to why he is unable to do so.
- 4) The Advocate may file motions, including motions for extension of time, with the hearing examiner.
- 5) The Advocate will present the case before the hearing examiner for any Complaint filed more than ten (10) days before the election, unless good cause is shown as to why he is unable to do so.

11.3 Hearing Examiners

- a) Selection. The Executive Director shall randomly appoint hearing examiners from the designated pool. The Executive Director may not appoint a hearing examiner who has made campaign contributions or endorsed any candidate in the race that is the subject of the hearing during the current election cycle.

b) Scope of Authority

- 1) The hearing examiner shall have the right to hear and rule on any motions including motions to dismiss and motions for extension of time.
- 2) The hearing examiner shall have the right to require oral argument prior to making a probable cause determination.
- 3) The hearing examiner may not approve settlement agreements between the Respondent and the Ethics Commission.

c) Probable Cause Determinations

- 1) The hearing examiner may make his or her probable cause determination based on the Complaint, the Respondent's written response and the probable cause memorandum, if one is filed.
- 2) In making a probable cause determination, the hearing examiner shall consider the following:
  - i) the sufficiency of the evidence against the Respondent;
  - ii) the admissions and other stipulations of the Respondent;
  - iii) the nature and circumstances of the Respondent's actions;
  - iv) the expense of further proceedings and the other factors as he or she deems material to their decision.
- 3) The hearing examiner will hold a probable cause hearing, if requested by the candidate Respondent or the Advocate, within the applicable time frame.
- 4) The hearing examiner will provide a written probable cause determination for all Complaints filed more than ten (10) days prior to the election.
- 5) The hearing examiner may make an oral probable cause determination for all Complaints within ten (10) days of the election.
- 6) The hearing examiner may utilize the assistance of the General Counsel or the staff attorney for staff support.

11. 4 Persons Against Whom a Complaint May be Filed

a) Candidates

- 1) Candidates and campaign staff for the Mayor and the Board of County Commissioners;
- 2) Candidates and campaign staff for Miami-Dade County Community Councils;
- 3) Candidates and campaign staff for any municipal elected office in Miami-Dade

County;

- 4) Candidates and campaign staff for any elective office with a constituency in whole or part in Miami-Dade County who agree to abide by the Mandatory or Voluntary Fair Campaign Practices Ordinance (i.e. judicial or legislative candidates).
- b) A person is considered a candidate if they have received campaign contributions or made expenditures in anticipation of running for an elective office; have appointed a campaign treasurer, or filed qualification papers for a particular office.
- c) A Complaint may not be filed against a political action committees or advocacy groups for issues on the ballot.

#### 11.5 Complaints Filed 50-20 days of the Election

- a) Notification. The Respondent shall receive a copy of the Complaint by mail or personal services within five (5) days of the filing of the Complaint
- b) Legal Sufficiency Determination. General Counsel or the staff attorney shall make a legal sufficiency determination within five (5) days of receiving the Complaint. A Complaint that is deemed legally insufficient shall not be scheduled for a probable cause hearing or determination and shall be placed on the next regularly scheduled Ethics Commission agenda.
- c) Preliminary Investigation. The Advocate may conduct a preliminary investigation of every legally sufficient Complaint.
- d) Appointment of Hearing Examiner. The Executive Director may randomly appoint a hearing examiner to make probable cause determinations of any legally sufficient Complaint.
- e) Written Response. The Respondent must file any written response to the allegations in the legally sufficient Complaint within three (3) days of receiving a legally sufficient Complaint. The Respondent may also request a hearing within three (3) days of receiving the Complaint.
- f) Probable Cause Hearing. The hearing examiner will conduct a probable cause hearing within three (3) days of receiving the request.
- g) Probable Cause Determinations. The Hearing Examiner will make a written probable cause determination within one (1) week of receiving the Respondent's written response or within three (3) days of holding a probable cause hearing.
- h) Default. A default determination may not be made against a candidate Respondent. A failure to respond or appear during the applicable time period shall be considered a waiver of the right to the expedited Complaint process.

i) Publication of Decision. The probable cause determination shall be considered final and the Complaint may be made public at the time the Hearing Examiner makes the determination unless it is appealed.

j) Appeals. The Respondent may file an appeal and request a hearing before the Ethics Commission within three (3) days of the written probable cause determination.

#### 11.6 Complaints Filed 20-10 days of the Election

a) Notification. The Respondent shall receive a copy of the Complaint by personal service within two (2) days of the filing of the Complaint.

b) Legal Sufficiency Determination. General Counsel or the staff attorney shall make a legal sufficiency determination within two (2) days of receiving the Complaint. A Complaint that is deemed legally insufficient shall not be scheduled for a probable cause hearing or determination and shall be placed on the next regularly scheduled Ethics Commission agenda.

c) Preliminary Investigation. The Advocate may conduct a preliminary investigation of every legally sufficient Complaint.

d) Appointment of Hearing Examiner. The Executive Director may randomly appoint a hearing examiner to make probable cause determinations of any legally sufficient Complaint.

e) Written Response. The Respondent must file any written response to the allegations in the legally sufficient Complaint within two (2) working days of receiving the Complaint. The Respondent may also request a hearing within two (2) days of receiving the legally sufficient Complaint.

f) Probable Cause Hearing. The hearing examiner will conduct a probable cause hearing within two (2) days of receiving the request.

g) Probable Cause Determinations. The Hearing Examiner will make a written probable cause determination within three (3) working days of receiving the Respondent's written response or within one (1) day of holding a probable cause hearing.

h) Default. A default determination may not be made against a candidate Respondent. A failure to respond or appear during the applicable time period shall be considered a waiver of the right to the expedited Complaint process.

i) Publication of Decision. The probable cause determination shall be considered final and the Complaint may be made public at the time the Hearing Examiner makes the determination unless it is appealed.

j) Appeals. The Respondent may file an appeal and request a hearing before the Ethics Commission within three (3) days of the written probable cause determination.

### 11.7 Complaints Filed Within 10 days of the Election

- a) Notification. The Respondent shall receive a copy of the Complaint by personal service within two (2) days of the filing of the Complaint.
- b) Legal Sufficiency Determination. General Counsel or the staff attorney shall make a legal sufficiency determination within two (2) days of receiving the Complaint. A Complaint that is deemed legally insufficient shall not be scheduled for a probable cause hearing or determination and shall be placed on the next regularly scheduled Ethics Commission agenda.
- c) Preliminary Investigation. The Advocate may conduct a preliminary investigation of every legally sufficient Complaint.
- d) Appointment of Hearing Examiner. The Executive Director may randomly appoint a hearing examiner to make probable cause determinations of any legally sufficient Complaint.
- e) Written Response. The Respondent must file any written response to the allegations in the legally sufficient Complaint within twenty four (24) hours of receiving the Complaint. The Respondent may also request a hearing within twenty four (24) hours of receiving the legally sufficient Complaint.
- f) Probable Cause Hearing. The hearing examiner will conduct a probable cause hearing within twenty four (24) hours of receiving the request.
- g) Probable Cause Determinations. The Hearing Examiner will make a written probable cause determination within one (1) working days of receiving the Respondent's written response or at the conclusion of the probable cause hearing.
- h) Default. A default determination may not be made against a candidate Respondent. A failure to respond or appear during the applicable time period shall be considered a waiver of the right to the expedited Complaint process.
- i) Publication of Decision. The probable cause determination shall be considered final and the Complaint may be made public at the time the Hearing Examiner makes the determination unless it is appealed.
- j) Appeals. The Respondent may file an appeal and request a hearing before the Ethics Commission.

### 11.8 Appeals

- a) The Ethics Commission may schedule a special hearing to hear an appeal of a probable cause determination or hear the appeal at the next regularly scheduled meeting.
- b) Neither the Advocate nor the Respondent may present additional evidence or witnesses at the appeal hearing.

c) The Respondent, the Advocate, or the Ethics Commission may file a motion for a public hearing in any case where probable cause is found.

d) The Ethics Commission may consider any proposed settlements between the Respondent and the Advocate at a regularly scheduled meeting or hold a special meeting to consider settlement agreements.

Attachment 1  
 COMMISSION ON ETHICS & PUBLIC TRUST  
 ETHICAL CAMPAIGN PRACTICES - EXPEDITED COMPLAINT PROCESS FLOWCHART

Time Line	NOTICE	RESPONSE	PC HEARINGS	DETERMINATION	APPEAL
Complaints received within 80 to 20 days prior to Election date	First 8 days - Mail or Personal Service LS determination Appointment of Hearing Examiner	Next 3 days - Respondent's response Written response OR request hearing before Examiner	PC Hearing will be held within 3 days of receipt of hearing request	PC determination within 3 working days	After PC determination, Respondent has 3 days to request hearing before full Ethics Commission
Complaints received within 20 to 10 days prior to Election date	Within 2 working days, by Personal Service LS determination Appointment of Hearing Examiner	Upon receipt, respondent has 2 working days to reply Written response OR request hearing before Examiner	PC hearing will be held within 2 days of receipt of hearing request	PC determination within 1 working day	After PC determination, Respondent has 3 days to request hearing before full Ethics Commission
Complaints received within 10 days of Election date	Within 2 working days, by Personal Service LS determination Appointment of Hearing Examiner	Upon receipt, respondent has 24 hours to reply Written response OR request hearing before Examiner	PC hearing will be held within 24 hours of receipt of hearing request	PC determination at conclusion of hearing or within 1 working day of receipt of response	After PC determination, Respondent has 2 days to request hearing before full Ethics Commission

FILENAME: Ethical Campaign Practices - Attachment

PA No. 422008