

## **ARTICLE LXXVIII. COMMISSION ON ETHICS AND PUBLIC TRUST**

### **Sec. 2-1066. Creation of Commission.**

There is hereby created and established pursuant to the Miami-Dade County Home Rule Charter, as amended by Miami-Dade County voters on March 12, 1996, an independent agency and instrumentality of Miami-Dade County to be known as the "Commission on Ethics and Public Trust" (hereinafter "Ethics Commission"). The Ethics Commission shall be an advisory, quasi-judicial body which may exercise all those powers either specifically granted herein or necessary for the exercise of those powers herein enumerated.

(Ord. No. 97-105, § 1(1), 7-8-97)

### **Sec. 2-1067. Legislative intent and purpose.**

The Board of County Commissioners ("County Commission") finds that the integrity of both the government decisionmaking process and the process whereby candidates are elected is essential to the continued functioning of an open government. In order to ensure the integrity of these processes and restore public confidence in government, the County Commission finds it necessary to create the Ethics Commission. The purpose of the Ethics Commission is to serve as the guardian of the public trust by, among other things, educating the public, candidates for elective office, elected and appointed officials and other public servants as to the required standards of ethical conduct and enforcing those standards of conduct. It is not the intent of the County Commission that the Ethics Commission serve as a personnel board resolving personnel matters involving County and municipal employees.

(Ord. No. 97-105, § 1(2), 7-8-97)

### **Sec. 2-1068. Jurisdiction.**

The jurisdiction of the Ethics Commission shall extend to any person required to comply with the County or municipal Code of Ethics Ordinances, Conflict of Interest Ordinances, Lobbyist Registration and Reporting Ordinance, Ethical Campaign Practices Ordinances or Citizens' Bill of Rights.

(Ord. No. 97-105, § 1(3), 7-8-97; Ord. No. 98-94, § 2, 7-7-98)

### **Sec. 2-1069. Membership, qualifications, terms, vacancies.**

(a) *Composition and appointment.* The Ethics Commission shall be composed of five (5) members. The members of the Ethics Commission shall be appointed as follows:

(1) The Chief Judge of the Eleventh Judicial Circuit shall be requested to appoint one (1) former federal judge, or former United States magistrate or former State court judge;

(2) The Chief Judge of the Eleventh Judicial Circuit shall be requested to appoint one (1) former U.S. Attorney or Assistant U.S. Attorney, former State Attorney or Assistant State Attorney, former County Attorney or Assistant County Attorney or former City Attorney or Assistant City Attorney;

(3) The Dean of the University of Miami School of Law or St. Thomas School of Law shall on a rotating basis be requested to appoint one (1) faculty member from his or her law school who has taught a course in professional legal ethics or has published or performed services in the field of professional legal ethics. The Dean of the University of Miami shall be requested to appoint the first faculty member to sit on the Ethics Commission. Upon the expiration of said member's term, the Dean of St. Thomas School of Law shall be requested to appoint a faculty member to sit on the Ethics Commission. Thereafter, each Dean shall on a rotating basis select a faculty member from his or her law school;

(4) The Director of Florida International University's Center for Labor Research and Studies shall be requested to appoint one (1) member; and

(5) The Miami-Dade County League of Cities, Inc. shall be requested to appoint one (1) member who has held elective office at the local level prior to appointment.

(b) *Additional qualifications.* Each member of the Ethics Commission shall be a United States citizen, reside of Miami-Dade County and shall be of outstanding reputation for integrity, responsibility and commitment serving the community. The members of the Ethics Commission should be representative community-at-large and should reflect the racial, gender and ethnic make-up of the community. Prior to final selection of each member of the Ethics Commission, those persons empowered herein to appoint members shall meet and evaluate the qualifications of each person(s) under consideration to ensure (a) that said person(s) is qualified to serve on the Ethics Commission and (b) that the membership of the Ethics Commission will be representative of the community-at-large and reflect the racial, gender and ethnic make-up of the community. Before entering upon the duties of office, each appointee on the Ethics Commission shall take the prescribed oath of office. Members of the Ethics Commission shall serve without compensation but shall be entitled to reimbursement for necessary expenses incurred in the discharge of their duties.

(c) *Term.* The members of the Ethics Commission shall serve staggered terms of four (4) years each, provided that of the original members, two (2) members shall be appointed for a term of two (2) years and three (3) shall be appointed for a term of four (4) years.

(d) *Vacancies.* A vacancy occurring during or at the expiration of a member's term on the Ethics Commission shall be filled as provided in subsections (a) and (b).

(e) *Additional requirements.* No individual, while a member of the Ethics Commission, shall:

- (1) Hold or campaign for any elective political office;
- (2) Hold office in any political party or political committee;
- (3) Actively participate in or contribute to any political campaign or political action committee;
- (4) Be employed by Miami-Dade County or any municipality within Miami-Dade County; or
- (5) Allow his or her name to be used by a campaign in support of or against any candidate for political office or any referendum or other ballot question. Nothing herein shall preclude a member of the Ethics Commission from signing a petition in support of or against any referendum or other ballot question.

(Ord. No. 97-105, § 1(4), 7-8-97)

### **Sec. 2-1070. Applicability of Conflict of Interest and Code of Ethics Ordinance.**

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1 of the Code of Miami-Dade County, Florida, shall be applicable to the members and staff of the Ethics Commission.

(Ord. No. 97-105, § 1(5), 7-8-97)

### **Sec. 2-1071. Organization of the Ethics Commission.**

The Ethics Commission shall elect one (1) of its voting members as chairperson who shall serve a term of two (2) years. No chairperson shall be permitted to serve two (2) consecutive terms.

The Ethics Commission shall hold regular meetings in accordance with the by-laws of the Ethics Commission and the Ethics Commission may hold such other meetings as it deems necessary. Except as provided in Section 2-1071, all meetings of the Ethics Commission shall be public and written minutes of the proceedings thereof shall be maintained by the County Commission. All actions taken at the meetings of the Ethics Commission shall be promptly and properly recorded. Copies of all minutes, resolutions, decisions or advisory opinions of the Ethics Commission shall be forwarded to the Clerk of the Board of County Commissioners no later than thirty (30) days subsequent to any meeting of the Ethics Commission.

The Ethics Commission shall make, adopt and amend by-laws, rules of procedure which are consistent with the provisions of this ordinance and rules and regulations for the Ethics Commission's governance. The Ethics Commission shall be empowered to appoint an Executive Director and to remove such appointee at will. The Executive Director shall be a member of the Florida Bar in good standing. The Ethics Commission shall utilize a competitive selection process when selecting an Executive Director. The Ethics Commission shall fix the Executive Director's salary. The Executive Director shall be exempt from the classified service.

The Executive Director shall be empowered to appoint, remove, and suspend employees or agents of the Ethics Commission, to fix their compensation, and to adopt personnel and management policies,

### **Sec. 2-1072. Powers and duties of the Ethics Commission.**

(a) The Ethics Commission shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The Ethics Commission shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the County and municipal:

- (1) Code of Ethics Ordinances;
- (2) Conflict of Interest Ordinances;
- (3) Lobbyist Registration and Reporting Ordinances; and
- (4) Ethical Campaign Practices Ordinances.

(b) The Ethics Commission shall be empowered to review, interpret and render advisory opinions regarding the applicability of the Citizens' Bill of Rights as provided in Section 2-1074.

(c) The Ethics Commission shall from time to time review County and municipal Conflict of Interest and Code of Ethics Ordinances, Lobbyist Registration and Reporting Ordinances, Ethical Campaign Practices Ordinances, the Citizens' Bill of Rights and applicable state and federal statutes relating to ethics in government and shall report annually to the County Commission.

(d) The Ethics Commission shall prepare and make available to any person a copy of ordinances within the Ethics Commission's jurisdiction and the Citizens' Bill of Rights.

(e) The County Commission shall by resolution set a reasonable filing fee to be paid by any person filing a complaint as provided in Section 2-1074. The Ethics Commission may waive the filing fee when a complainant is indigent.

(f) The Ethics Commission shall be empowered to appoint and remove the Inspector General and exercise those powers as provided in Section 2-1076.

(Ord. No. 97-105, § 1(7), 7-8-97; Ord. No. 97-215, § 1, 12-16-97; Ord. No. 98-94, § 2, 7-7-98)

### **Sec. 2-1073. Financial support for the Ethics Commission.**

The Ethics Commission shall establish a fiscal year which coincides with that of Miami-Dade County, and the County shall provide the Ethics Commission with financial support pursuant to the official county budget. The Ethics Commission shall timely submit to the Board of County Commissioners an Ethics Commission budget request pertaining to operating and capital expenditures, which request shall not be implemented until approved by the Board of County Commissioners.

The Ethics Commission budget request shall be prepared on official county budget forms in a format prescribed by the County Manager, shall be reviewed in a manner similar to that in which other County departments are reviewed, and shall be incorporated in the proposed budget and timely submitted to the County Commission each year. Nothing contained herein shall be construed to prohibit the Ethics Commission from submitting to the County Commission supplemental budget requests which, if approved by the Commission, shall constitute amendments to the county budget. In addition to budgetary appropriations made by Miami-Dade County, the Ethics Commission may accept grants, contributions or appropriations from the federal government, state government, any municipality within Miami-Dade County, or any academic institution or nonprofit entity which has not entered into a contract or transacted business with the County. The Ethics Commission may accept grants, contributions or appropriations from an academic institution or nonprofit entity which has entered into a contract or transacted business with the County if the County Commission by resolution approves the grant, contribution, or appropriation. No other grants, contributions or appropriations may be accepted by the Ethics Commission.

(Ord. No. 97-105, § 1(8), 7-8-97; Ord. No. 01-23, § 1, 1-23-01)

### **Sec. 2-1074. Procedure on complaint of violation or request for advisory opinion within Ethics Commission's jurisdiction.**

(a) *Legally sufficient complaint.*

(1) Upon a written complaint filed by the Inspector General, the Advocate or the State Attorney who alleges a violation within the jurisdiction of the Ethics Commission, the Ethics Commission shall conduct an investigation of said complaint. Any complaint filed by the Inspector General, the Advocate or the State Attorney shall be sworn to by the person filing the complaint before a notary public and shall contain the following language: Personally known to me and appeared before me, \_\_\_\_\_, whose signature appears below, being first duly sworn, says that the allegations set forth in this complaint are based upon facts which have been sworn to as true by a material witness or witnesses and which if true would constitute the offenses alleged and that this complaint is instituted in good faith. Within five (5) days after receipt of a complaint by the Ethics Commission, a copy of the complaint shall be sent to the alleged violator.

(2) Upon a written complaint, except for a complaint filed by the Inspector General, the Advocate or the State Attorney as provided for in Section 2-1074 (a) (1), which alleges the elements of a violation within the Ethics Commission's jurisdiction and is (i) executed on a form prescribed by the Ethics Commission (ii) based substantially upon the personal knowledge of the complainant and (iii) signed under oath or affirmation by the complaining person, the Ethics Commission shall investigate any alleged violation within its jurisdiction. Within thirty (30) days after receipt of a complaint by the Ethics Commission, a copy shall be sent to the alleged violator.

(b) *Preliminary investigation and public hearing.* A preliminary investigation shall be undertaken by the Ethics Commission of each legally sufficient complaint over which the Ethics Commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. Where a complaint is filed pursuant to subsection (a)(1), the Ethics Commission shall within sixty (60) days from the receipt of the complaint, unless extended by the Ethics Commission for good cause, determine whether the complaint is legally sufficient. If, upon completion of the preliminary investigation, the Ethics Commission finds no probable cause to believe that a violation has been committed, the Ethics Commission shall dismiss the complaint with the issuance of a report to the complainant and the alleged violator. If the Ethics Commission finds from the preliminary investigation probable cause to believe that a violation has been committed, it shall notify via certified mail the complainant and the alleged violator, otherwise known as the respondent, in writing. Where a complaint is filed pursuant to subsection (a)(1), the Ethics Commission shall make a probable cause determination within sixty (60) days from the date the complaint is filed. Where a complaint is filed pursuant to subsection (a)(2), the Ethics Commission shall make a probable cause determination within sixty (60) days from the date the complaint is filed. Upon request submitted to the Ethics Commission in writing, any person who the Ethics Commission finds 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 to a public hearing if the request is not received within twenty-one (21) days following the mailing of the probable cause notification required by this subsection. The Ethics Commission may on its own motion require a public hearing, may conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the citizens of Miami-Dade County. The public hearing provided for in this Section 2-1074 shall be held within sixty (60) days of the probable cause determination unless extended by the Ethics Commission for good cause.

(c) *Investigations.* Investigations shall be conducted by Ethics Commission staff or by any other person or agency so designated by the Ethics Commission under the supervision of the Executive Director and/or the Inspector General. Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue.

(d) *Counsel.*

(1) *Counsel to Ethics Commission.* The Ethics Commission shall select counsel to advise the Ethics Commission.

(2) *Advocate.* The Ethics Commission shall retain legal counsel to serve as the Advocate. The Advocate shall prosecute cases before the Ethics Commission.

(3) *Respondent.* The respondent may appear on his or her own behalf or may be represented by a lawyer. All notices and communications to a respondent represented by a lawyer shall be made through respondent's lawyer.

(4) *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 a lawyer shall be made through complainant's lawyer.

(5) *Legal Opinion From County or City Attorney.* Where a complaint or request for an advisory opinion requires interpretation of a particular ordinance within the jurisdiction of the Ethics Commission :

provided in Section 2-1072, the County Attorney and any City Attorney may provide the Ethics Commission with a nonbinding legal opinion.

(e) *Public meetings and public records.* All proceedings, the complaint, and other records relating to the preliminary investigation as provided herein shall be confidential and exempt from the provisions of Section 119, Florida Statutes, either until the alleged violator requests in writing that such investigation and records be made public records or the preliminary investigation is completed notwithstanding any provision of Chapter 120, Florida Statutes, and Chapter 286, Florida Statutes. As provided in Section 2-1074(b), the preliminary investigation is completed when the probable cause determination is made. All other proceedings conducted pursuant to this subsection shall be public meetings within the meaning of Chapter 286, Florida Statutes, and all other documents made or received by the Ethics Commission shall be public records within the meaning of Chapter 119, Florida Statutes.

(f) *[Response.]* Any response to a request of a person within the Ethics Commission's jurisdiction shall be addressed in the first instance to the person making the request.

(g) *Subpoena.* The Ethics Commission shall be empowered to subpoena, audit, and investigate. The Ethics Commission may by a two-thirds ( 2/3) vote of the entire membership subpoena relevant witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the Ethics Commission or to the exercise of its powers. The Ethics Commission may delegate to its investigators the authority to administer oaths and affirmations. Prior to issuing a subpoena, the Executive Director shall notify the State Attorney and the U.S. Attorney for the Southern District of Florida. In the case of a refusal to obey a subpoena issued to any person, the Ethics Commission may make application to any circuit court of this State which shall have jurisdiction to order the witness to appear before the Ethics Commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Any person who fails to obey the order may be punished in a court of law.

(h) *Subpoenas for discovery; 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 the respondent or Advocate. The requesting person 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. Subpoenas shall be issued as provided in Section 2-1074(g). Parties may also obtain discovery through the means and in the manner provided in Rule 1.280 through 1.390, Florida Rules of Civil Procedure. The chairperson or a member of the Ethics Commission designated by the chairperson may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(i) *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. The lists shall contain the correct names and addresses of the witnesses and shall describe with particularity those documents or other items that he or she wishes to have the witness bring to the hearing pursuant to subpoena duces tecum. Subpoenas shall be issued as provided in Section 2-1074(g).

(j) *Motions.*

(1) All motions shall be in writing unless made on the record during a hearing, and shall fully state the actions requested and the grounds relied upon. The motion shall include a statement that the movant has conferred with the Advocate and all other parties of record and shall state whether there is any objection to the motion.

(2) The original 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.

(3) Unless the motion is in opposition to the proceeding as provided in Section 2-1074(k), 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 is not required to hold a hearing on the motion in order to rule upon it.

(4) Every written motion may be accompanied by, or included in, a written memorandum stating the grounds upon which the motion is based. Other parties to a proceeding may, within seven (7) days of service of a written motion, file written memoranda in opposition.

(k) *Motions in opposition to proceeding.* Motions in opposition to a proceeding include motions to dismiss, to strike, and for a more definite statement and shall be filed within twenty (20) days of service of the notice of hearing. Unless waived by the parties, the Ethics Commission shall hold a hearing and rule on the motion.

(l) *Prehearing conferences.* The chairperson, or a member of the Ethics Commission designated by the

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

(m) *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.

(n) *Procedures for public hearings.*

(1) *Presentation of the case.* The Advocate shall present his or her case first. Respondent may then present his or her case. Rebuttal evidence may be permitted in the discretion of the Ethics Commission.

(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.

(3) *Evidence.*

(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 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 a person, however, for any reason permissible in a court of law under the Florida Rules of Civil Procedure.

(4) *Transcript of proceedings.* The proceedings shall be recorded by recording instruments or by a court reporter. Respondent may, at his or her own expense, provide a court reporter or recording instrument. The Ethics Commission may provide a court reporter. No transcript of the proceedings shall be prepared unless requested by the Ethics Commission or by the respondent. If the respondent requests that a transcript be prepared by a court reporter, the respondent shall pay the expense of transcription. If the respondent requests that the 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.

(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 and the Advocate each proposed finding in the proposal that is rejected shall be accompanied by a statement summarizing the reasons for rejection.

(o) *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 the public hearing in good faith. Such a motion shall specifically state the grounds upon which it is made. The motion shall be heard by the Ethics Commission in accordance with the procedure provided for in subsection (k).

(p) *Public order imposing penalty.* Upon completion of any investigation initiated under this subsection, the Ethics Commission shall make a finding and public report as to whether any provision within its jurisdiction has been violated. If the Ethics Commission finds, based upon clear and convincing evidence in the record, that a violation has been committed, the Ethics Commission shall issue an order imposing the appropriate penalty provided in the ordinance being enforced. The public report and final order shall include a determination as to

whether the violation was intentional or unintentional. The Ethics Commission shall, within eighteen (18) months of the filing of a complaint, render a final order disposing of said complaint. If a person fails to comply with an order issued by the Ethics Commission, the Ethics Commission may make application to any circuit court of this State which shall have jurisdiction to order the violator to comply with the order of the Ethics Commission. A violator who fails to obey the order may be punished by the court.

(q) *[Initiating prosecution.]* The Ethics Commission shall notify the State Attorney or any other appropriate official or agency having authority to initiate prosecution when a violation of criminal law is indicated. The Ethics Commission shall notify the State of Florida Commission on Ethics, the State Attorney, the U.S. Attorney for the Southern District of Florida and other appropriate law enforcement agencies within ten (10) days of a finding of probable cause or of a final order disposing of a complaint.

(r) *Exhaustion of municipal remedies.* Where a municipal Code of Ethics Ordinance, Conflict of Interest Ordinance or Lobbyist Registration and Reporting Ordinance provides for a municipal administrative remedy, a complainant shall be required to exhaust his or her municipal administrative remedies prior to filing a writ of mandamus with the Ethics Commission.

(s) *Dismissal of complaints.* Notwithstanding any other provision of this ordinance, 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 when it appears that the alleged violation was inadvertent, unintentional or immaterial. In the event the Ethics Commission dismisses a complaint provided in this subsection (s), the Ethics Commission shall issue a public report stating with particularity its reasons for the dismissal. The Ethics Commission may, at the request of the State Attorney or any other law enforcement agency, stay an ongoing proceeding. The Ethics Commission shall not interfere with any ongoing criminal investigation of the State Attorney or U.S. Attorney for the Southern District of Florida.

(t) *F frivolous or groundless complaints.* In any case in which the Ethics Commission determines that the complaining party filed a frivolous or groundless complaint as defined in Section 57.105, Florida Statutes, the Ethics Commission shall order the complaining party to pay any costs and attorney's fees incurred by the Ethics Commission and/or the alleged violator. The determination by the Ethics Commission regarding whether a complaint is frivolous or groundless shall be deemed conclusive. The County Commission or any city commission may pay any attorney's fees and costs incurred by a respondent when the Ethics Commission finds either a probable cause to believe that a violation has been committed or that no violation has been committed.

(u) *[Other applicable laws.]* The provisions of this article shall be deemed supplemental to any other applicable Miami-Dade County ordinance or state or federal law and are not intended to replace or repeal any provision of state or federal law or of the Miami-Dade County Code.

(v) *Prospective jurisdiction.* The Ethics Commission shall be empowered to consider alleged violations within its jurisdiction committed on or after the effective date of this ordinance. Any alleged violation committed before the effective date of this ordinance shall be governed by the applicable County or municipal Code of Ethics Ordinances, Conflict of Interest Ordinances or Lobbyist Registration and Reporting Ordinances in effect at the time of the alleged violations.

(w) *Personnel proceeding.* Where an employee of Miami-Dade County or a municipality within Miami-Dade County is alleged to have violated an ordinance within the jurisdiction of the Ethics Commission and, based upon the same set of facts, is subject to an ongoing disciplinary action initiated by Miami-Dade County or municipality, the Ethics Commission shall stay consideration of a complaint until the conclusion of the personnel proceeding.

(x) *Statute of limitations.* Unless provided otherwise in a County or municipal Code of Ethics Ordinance, Conflict of Interest Ordinance, Ethical Campaign Practices Ordinance or Lobbyist Registration and Rating Ordinance, an action may be taken on a complaint filed more than three (3) years after the violation is alleged to have accrued, unless a person, by fraud or other device, prevents discovery of the violation. Where the allegations are the subject of a personnel proceeding or where the complainant is required to exhaust his or her administrative remedies prior to filing a complaint, the statute of limitations shall be tolled until the termination of said personnel proceeding or the exhaustion of administrative remedies.

(y) *Advisory opinion.* Any person within the Ethics Commission's jurisdiction, when in doubt about the applicability or interpretation of any provision within the Ethics Commission's jurisdiction, to himself or herself in a particular context, may submit in writing the facts of the situation to the Ethics Commission with a request for an advisory opinion to establish the standard of public duty, if any. An advisory opinion shall be rendered by the Ethics Commission on a timely basis, and each such opinion shall be numbered, dated and published. Such opinion, until amended or revoked, shall be binding on the conduct of the official or candidate who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the

request for the advisory opinion.

(Ord. No. 97-105, § 1(9), 7-8-97; Ord. No. 98-94, § 2, 7-7-98; Ord. No. 99-149, § 1, 10-19-99; Ord. No. 06-149, § 1, 10-10-06)

## **. 2-1075. Appeals.**

(a) 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. 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 Executive Director if the party requesting the record is indigent.

(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 pursuant to this chapter.

(c) 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 advisory opinion of the Ethics Commission.

(Ord. No. 97-105, § 1(10), 7-8-97)

## **Sec. 2-1076. Office of the Inspector General.**

(a) *Created and established.* There is hereby created and established the Office of Miami-Dade County Inspector General. The Inspector General shall head the Office. The organization and administration of the Office of the Inspector General shall be sufficiently independent to assure that no interference or influence external to the Office adversely affects the independence and objectivity of the Inspector General.

(b) *Minimum Qualifications, Appointment and Term of Office.*

(1) *Minimum qualifications.* The Inspector General shall be a person who:

- (a) Has at least ten (10) years of experience in any one, or combination of, the following fields:
  - (i) as a Federal, State or local Law Enforcement Officer;
  - (ii) as a Federal or State court judge;
  - (iii) as a Federal, State or local government attorney;
  - (iv) progressive supervisory experience in an investigative public agency similar to the inspector general's office;
- (b) Has managed and completed complex investigations involving allegations of fraud, the deception and conspiracy;
- (c) Has demonstrated the ability to work with local, state and federal law enforcement agencies and the judiciary; and
- (d) Has a four-year degree from an accredited institution of higher learning.

(2) *Appointment.* The Inspector General shall be appointed by the Ad Hoc Inspector General Selection Committee ("Selection Committee"), except that before any appointment shall become effective, the appointment must be approved by a majority of the whole number of members of the Board of County Commissioners at the next regularly scheduled County Commission meeting after the appointment. In the event that the appointment is disapproved by the County Commission, the appointment shall become null and void, and the Selection Committee shall make a new appointment, which shall likewise be submitted for approval by the County Commission. The Selection Committee shall be composed of five members selected as follows:

- (a) The State Attorney of the Eleventh Judicial Circuit for Miami-Dade County;
- (b) The Public Defender of the Eleventh Judicial Circuit for Miami-Dade County;
- (c) The Chairperson of the Miami-Dade Commission on Ethics and Public Trust;



(d) The President of the Miami-Dade Police Chief's Association; and

(e) The Special Agent in charge of the Miami Field Office of the Florida Department of Law Enforcement.

The members of the Selection Committee shall elect a chairperson who shall serve as chairperson until the Inspector General is appointed. The Selection Committee shall select the Inspector General from a list of qualified candidates submitted by the Miami-Dade County Employee Relations Department.

(3) *Term.* The Inspector General shall be appointed for a term of four (4) years. In case of a vacancy in the position of Inspector General, the Chairperson of the Board of County Commissioners may appoint a deputy inspector general, assistant inspector general, or other Inspector General's office management personnel as interim Inspector General until such time as a successor Inspector General is appointed in the same manner as described in subsection (b)(2) above. The Commission may by majority vote disapprove the same appointment made by the Chairperson at the next regularly scheduled County Commission meeting after the appointment. In the event such appointment shall be disapproved by the County Commission, the appointment shall become null and void and, prior to the next regularly scheduled Commission meeting, the Chairperson shall make a new appointment which shall likewise be subject to disapproval as provided in this subsection (3). Any successor appointment made by the Selection Committee as provided in subsection (b)(2) shall be for the full four-year term.

Upon expiration of the term, the Board of County Commissioners may by majority vote of members present reappoint the Inspector General to another term. In lieu of reappointment, the Board of County Commissioners may reconvene the Selection Committee to appoint the new Inspector General in the same manner as described in subsection (b)(2). The incumbent Inspector General may submit his or her name as a candidate to be considered for selection and appointment.

(4) *Staffing of Selection Committee* The Miami-Dade County Employee Relations Department shall provide staffing to the Selection Committee and as necessary will advertise the acceptance of resumes for the position of Inspector General and shall provide the Selection Committee with a list of qualified candidates. The County Employee Relations Department shall also be responsible for ensuring that background checks are conducted on the slate of candidates selected for interview by the Selection Committee. The County Employee Relations Department may refer the background checks to another agency or department. The results of the background checks shall be provided to the Selection Committee prior to the interview of candidates.

(c) *Contract.* The Director of the Employee Relations Department shall, in consultation with the County Attorney, negotiate a contract of employment with the Inspector General, except that before any contract shall become effective, the contract must be approved by a majority of Commissioners present at a regularly scheduled Commission meeting.

(d) *Functions, authority and powers.*

(1) The Office shall have the authority to make investigations of county affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions.

(2) The Office shall have the power to require reports from the Mayor, County Commissioners, Managers, County agencies and instrumentalities. County officers and employees and the Public Health Trust and officers and employees regarding any matter within the jurisdiction of the Inspector General.

(3) The Office shall have the power to subpoena witnesses, administer oaths and require the production of records. In the case of a refusal to obey a subpoena issued to any person, the Inspector General may make application to any circuit court of this State which shall have jurisdiction to order the witness to appear before the Inspector General and to produce evidence if so ordered, or to give testimony touching on the matter in question. Prior to issuing a subpoena, the Inspector General shall notify the State Attorney and the U.S. Attorney for the Southern District of Florida. The Inspector General shall not interfere with any ongoing criminal investigation of the State Attorney or the U.S. Attorney for the Southern District of Florida where the State Attorney or the U.S. Attorney for the Southern District of Florida has explicitly notified the Inspector General in writing that the Inspector General's investigation is interfering with an ongoing criminal investigation;

(4) The Office shall have the power to report and/or recommend to the Board of County Commissioners whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Any review of a proposed project or program shall be performed in such

manner as to assist the Board of County Commissioners in determining whether the project or program is the most feasible solution to a particular need or problem. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plan specifications and applicable law;

(5) The Office shall have the power to analyze the need for, and the reasonableness of, proposed change orders. The Inspector General shall also be authorized to conduct any reviews, audits, inspections, investigations or analyses relating to departments, offices, boards, activities, programs and agencies of the County and the Public Health Trust;

(6) The Inspector General may, on a random basis, perform audits, inspections and reviews of all County contracts. The cost of random audits, inspections and reviews shall, except as provided in (a) through (o) in this subsection (6) be incorporated into the contract price of all contracts and shall be one quarter ( 1/4) of the (1) percent of the contract price (hereinafter "IG contract fee"). The IG contract fee shall not apply to the following contracts:

- (a) IPSIG contracts;
- (b) Contracts for legal services;
- (c) Contracts for financial advisory services;
- (d) Auditing contracts;
- (e) Facility rentals and lease agreements;
- (f) Concessions and other rental agreements;
- (g) Insurance contracts;
- (h) Revenue-generating contracts;
- (i) Contracts where an IPSIG is assigned at the time the contract is approved by the Commission;
- (j) Professional service agreements under one thousand dollars (\$1,000.00);
- (k) Management agreements;
- (l) Small purchase orders as defined in Administrative Order 3-2;
- (m) Federal, state and local government-funded grants;
- (n) Interlocal agreements; and
- (o) Grant Agreements granting not-for-profit organizations Building Better Communities General Obligation Bond Program funds.

Notwithstanding the foregoing, the Commission may by resolution specifically authorize the inclusion of the IG contract fee in any contract. Nothing contained in this Subsection (c)(6) shall in any way limit the powers of the Inspector General provided for in this Section to perform audits, inspections, reviews, audits, investigations on all county contracts including, but not limited to, those contracts specifically exempt from the IG contract fee.

(7) Where the Inspector General detects corruption or fraud, he or she shall notify the appropriate law enforcement agencies. Subsequent to notifying the appropriate law enforcement agency, the Inspector General may assist the law enforcement agency in concluding the investigation. When the Inspector General detects a violation of one (1) of the ordinances within the jurisdiction of the Ethics Commission, he or she may file a complaint with the Ethics Commission or refer the matter to the Advocate;

(8) The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance and procurement process including, but not limited to project design, establishment of bid specifications, bid submittals, activities of the contractor, its office agents and employees, lobbyists, County staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud.

(9) The Inspector General shall have the power to review and investigate any citizen's complaint regarding County or Public Health Trust projects, programs, contracts or transactions.

(10) The Inspector General may exercise any of the powers contained in Section 2-1076 upon his or her own initiative.

(11) The Inspector General shall be notified in writing prior to any meeting of a selection or negotiation

