

Memorandum



Date: May 13, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Amendment to Implementing Order 2-8: Ethical Campaign Practices – Expedited
Hearing Procedure

HPSI

Agenda Item No. 3E

A handwritten signature in black ink, appearing to read "Burgess", written over the printed name of the County Manager.

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) adopt the attached resolution amending Implementing Order 2-8 related to the Ethical Campaign Practices Ordinance.

SCOPE

The scope is countywide. The Ethical Campaign Practices Ordinance applies to all candidates for elective office in Miami-Dade County.

FISCAL IMPACT

There is no fiscal impact.

TRACK RECORD/MONITORING

The Ethics Commission is responsible for this Implementing Order.

BACKGROUND

In 2006, the Ethical Campaign Practices Ordinance was amended to provide for an expedited procedure for complaints filed within fifty days of a primary, general or special election.

Implementing Order 2-8 was later adopted to govern the selection and appointment of hearing examiners to make probable cause determinations. The original Implementing Order provided that hearing examiners would be either retired judges or local attorneys who have previously served as hearing examiners for Miami-Dade County.

The proposed amendments would broaden the qualifications for a hearing examiner to any Florida Bar member with ten or more years of experience. The changes would also provide for a preference for attorneys with local government or hearing officer experience. The Ethics Commission is requesting the proposed changes to increase the pool of hearing examiners for the upcoming election cycle.

The Ethics Commission rules of procedure govern hearing examiner responsibilities. Therefore, the language regarding the hearing examiner's authority over procedural motions is being eliminated to avoid any confusion or inconsistencies.

A handwritten signature in black ink, appearing to be initials, written above a horizontal line.

Assistant County Manager

Approved _____ Mayor

Agenda Item No.

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING AMENDMENTS TO IMPLEMENTING
ORDER 2-8: ETHICAL CAMPAIGN PRACTICES - EXPEDITED
PROCEDURE

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board approves the amendments to Implementing Order 2-8: Ethical Campaign Practices - Expedited Procedure.

The foregoing resolution was offered by Commissioner

, who moved its adoption. The motion was seconded by

Commissioner

and upon being put to a vote, the vote was as

follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro
Carlos A. Gimenez
Barbara J. Jordan
Dorrian D. Rolle
Katy Sorenson
Sen. Javier D. Souto

Audrey M. Edmonson
Sally A. Heyman
Joe A. Martinez
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of June, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Gerald K. Sanchez

I.O. No.: 2-8
Ordered: 05/06/2008
Effective: 05/16/2008

MIAMI-DADE COUNTY
IMPLEMENTING ORDER

Ethical Campaign Practices-Expedited Hearing Procedure

AUTHORITY:

Sections ~~1.02~~ 1.01, 2.02 and 5.03(D) of the Miami-Dade County Home Rule Amendment and Charter and Section 2-11.1.1 of the Code of Miami-Dade County.

SCOPE:

This Implementing Order establishes the procedure for the expedited process for the Ethical Campaign Practices Ordinance.

POLICY:

In order for speedier resolution of complaints brought pursuant to the Ethical Campaign Practices Ordinance, the Ethics Commission will conduct expedited proceedings of ethical campaign practices complaints filed within fifty days of a primary, general or special election.

PURPOSE:

~~The following Implementing Order outlines the expedited complaint procedure.~~

NOTIFICATION

The Ethics Commission will notify the candidate within five working days of any complaint received within fifty days of a primary, general or special election. If the complaint is received within twenty days of the election, the Ethics Commission must notify the candidate, by personal service, within two working days of the filing of the complaint with the Ethics Commission.

SELECTION AND APPOINTMENT OF HEARING EXAMINERS

The Ethics Commission may create a pool of hearing examiners to make probable cause determinations. Hearing Examiners may be retired judges who served at least ten years on the bench or ~~local attorneys who have served as hearing examiners for Miami-Dade County.~~ who have been members of the Florida Bar for ten years or more. Preference may be given to applicants with local government, hearing officer or hearing examiner experience. Upon receipt of a complaint, the Executive Director will select a hearing examiner from the pool established by the Ethics Commission. ~~The hearing examiner will have the authority to rule on any procedural motion, including motions for extension of time, filed by either the Advocate or the respondent.~~

DETERMINATION OF VIOLATION

For complaints filed more than twenty days before the election, the candidate will have three days to submit a written response to a legally sufficient complaint. The Advocate may also file a probable cause memorandum. The Executive Director will distribute the complaint, the response and the probable cause memorandum, if any, to a hearing examiner chosen from the pool. The Hearing Examiner will make a written determination within three days of receiving the probable cause memoranda from the Respondent and the Advocate. Upon motion by either the

Advocate or the candidate respondent, the Hearing Examiner may hold a probable cause hearing. All applicable time periods under this section will be reduced to two working days for complaints received less than twenty days before the election. The applicable time period does not include Saturday, Sunday or legal holidays and is not automatically extended for service by mail.

TEN-DAY COMPLAINTS

For all complaints received within ten days of an election, the Respondent has the right to a probable cause hearing within two working days of receiving notice of the complaint. The hearing examiner will make a probable cause determination at the conclusion of the probable cause hearing based upon the written pleadings, evidence and oral argument of the Respondent. The Advocate may also present argument at any probable cause hearing. If the Respondent waives his or her right to a hearing, the hearing examiner's determination will be based on the written submissions of the Complainant and the Respondent received within two working days of the filing of the complaint.

APPEAL OF PROBABLE CAUSE DETERMINATION

The candidate respondent will have three days from the date of service of the probable cause determination to appeal the determination by requesting a hearing before the Ethics Commission.

PUBLIC HEARING

Pursuant to 2-1074 (b)of the Code of Miami-Dade County, the Ethics Commission may upon motion by the Respondent or on its own motion set a public hearing, conduct further investigation , enter into settlements or issue a public report and final order on the matter.

County Manager

Approved by the County Attorney as
to form and legal sufficiency _____