Memorandum

MIAMI-DADE COUNTY

Date: June 3, 2010

Agenda Item No. 10(A)(2)

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

This item was amended at the Health, Public Safety and Intergovernmental Committee on May 13, 2010 to provide that hearing examiners shall be retired judges or attorneys who have been members of the Florida Bar for ten or more years rather than may be retired judges or attorneys with ten or more years of experience. The item was also amended to state that preference shall be given to applicants with local government or hearing examiner experience.

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 incpnsistencies.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: June 3, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 10(A)(2)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

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RESOLUTION NO. _____

RESOLUTION APPROVING AMENDMENTS TO THE IMPLEMENTING ORDER 2-8 FOR THE EXPEDITED PROCESS FOR THE ETHICAL CAMPAIGN PRACTICES ORDINANCE

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 for the Expedited Process for the Ethical Campaign Practices Ordinance in substantially the form attached hereto and made a part hereof.

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	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

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. GKS

Gerald K. Sanchez

I.O. No: 2-8
Ordered: ~~5/06/2008~~
Effective: ~~05/16/2008~~

MIAMI-DADE COUNTY
IMPLEMENTING ORDER

Ethical Campaign Practices-Expedited Hearing Procedure

AUTHORITY:
Section ~~1.0 2~~ 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.

~~**PURPOSE:**~~
~~The following Implementing Order outlines the expedited complaint procedure.~~

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.

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~~]][1] >>shall<< 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~~]] >>shall<< 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..~~

[1] Committee amendments are indicated as follows: words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< constitute the amendment proposed.

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 _____