

**BCC Meeting:  
November 2, 2021  
Research Notes**

**Item No. 7C  
File No. 211324**

**Research: JNF & TA / Reviewer: PGE**

ORDINANCE RELATING TO THE BID PROTEST PROCESS; AMENDING SECTION 2-8.4 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO: (1) CODIFY COUNTY PROCEDURES FOR SELECTION, TERM, QUALIFICATIONS, SELECTION CRITERIA, ATTENDANCE REQUIREMENTS, REMOVAL AND VACANCIES OF HEARING EXAMINERS FOR BID PROTEST HEARINGS; AND (2) REQUIRE THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO PUBLISH UPCOMING OR EXISTING HEARING EXAMINER PANEL VACANCIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**Prime Sponsor:** Senator René Garcia, District 13

**Requester:** None

**Board Action Date:** 6/2/21 Board of County Commissioners Meeting (Adopted on First Reading, 13-0)

**Committee Action Date:** 10/14/21 - County Infrastructure, Operations and Innovations Committee

**RESEARCH FINDINGS**

OCA's review of the item found no substantive legislative, procedural or administrative noncompliance. See the Additional Information section for historical and other background information on the item.

**FISCAL IMPACT ANALYSIS**

This ordinance would require the Mayor or Mayor's Designee to publish upcoming or existing Hearing Examiner Panel vacancies, which is not currently a practice of the Clerk of the Board. Specifically, the vacancy would need to be posted prominently on the County's website and published for no less than once a week for two weeks in a newspaper of general circulation, specifying the minimum requirements and outlining the application process, and deadline. The cost of the advertisement would vary based on the size, frequency, and publication(s) used, and the notice placement depends on where it will be accepted and preferred by the County Attorney's Office.

At OCA's request, the Clerk of the Board provided samples of invoices for advertisement of public notices. Recent notices regarding opportunities to serve as Special Magistrates before the Miami-Dade County Value Adjustment Board cost \$99 to \$135 for the Daily Business Review and \$1,046 for Miami Today. Ads in The Miami Herald for legal notices, and for public notice of BCC Committee meetings, cost from \$863 to \$7,785, varying widely in cost depending on the section of the paper the ad is placed, what day the ad is run, and the number of words in the ad.

The item's Fiscal Impact Statement references additional technology tool(s) that may be needed by the Clerk of the Board to manage and process these added requirements.

**ADDITIONAL INFORMATION**

This proposed ordinance codifies the procedures set forth in a June 20, 1995 memorandum signed by both the County Attorney and the Clerk of the Board, which was accepted by the BCC on July 11, 1995. The memorandum was agenda item 6B1 on the July 11, 1995 BCC agenda, but is not currently found in Legistar.

The new requirements of this ordinance are:

1. The advertising of vacancies on the panel; and

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2. The Clerk of the Board and the County Attorney shall report to the Board on the selection of any hearing examiners to the panel, to include their respective race, gender, and ethnicity to ensure that they are representative of the community at large.

The panel would continue to be selected and appointed jointly by the County Attorney and Clerk of the Board and serve a two-year term.

The creation of Section 2-8.4(f)(5) *Utilization and Attendance* and (6) *Removal and Vacancies* of the County Code (which codifies the current provisions) requires automatic removal of hearing examiners for various reasons, such as inability to serve on three consecutive occasions or five occasions during his/her term. This may require staff time to track each hearing examiner's record to ensure compliance.

[Implementing Order \(I.O.\) 3-21](#) establishes the requirements and procedures governing bid protests brought by a participant in a competitive process utilized for award of a County contract or lease of a County property. The process calls for the Clerk of the Board to appoint a hearing examiner no later than five working days following the filing of a bid protest. The I.O. makes no reference to the selection process of the panel of hearing examiners.

The current panel of Hearing Examiners was selected and appointed jointly by the Clerk of the Board and the County Attorney on February 21, 2021:

1. Gisela Cardonne Ely, 11<sup>th</sup> Judicial Circuit Senior Judge
2. Eugene J. Fierro, 11<sup>th</sup> Judicial Circuit Senior Judge
3. William Johnson, 11<sup>th</sup> Judicial Circuit Senior Judge
4. Sandy E. Karlan, 11<sup>th</sup> Judicial Circuit Senior Judge
5. Judith L. Kreeger, 11<sup>th</sup> Judicial Circuit Senior Judge
6. Steven D. Robinson, 11<sup>th</sup> Judicial Circuit Senior Judge
7. Victoria S. Sigler, 11<sup>th</sup> Judicial Circuit Senior Judge
8. Raphael Steinhardt, 11<sup>th</sup> Judicial Circuit Senior Judge
9. Marc. A Douthit, Attorney (Currently Serving as Hearing Examiner)

[Section 2-8.4 of the County Code](#) pertaining to Protest Procedures requires a written intent to protest within three workdays of the filing of the award recommendation with the Clerk of the Board and within three days of filing the written intent to protest, the protester must file the complete bid protest, including pertinent documents and supporting evidence. It should be noted that protests often do not result in bid protest hearings for many reasons, such as the issues being resolved administratively or the protests are withdrawn at a later date. OCA requested the number of bid protests filed as compared to actual bid protest hearings held, but the Clerk of the Board advised that the statistics since 2020 are not representative, due to the pandemic.