

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA**

**FINAL PRESENTMENT
OF THE
PALM BEACH COUNTY GRAND JURY**

**STATUS REPORT OF THE GRAND JURY REGARDING PALM BEACH
COUNTY GOVERNANCE AND PUBLIC CORRUPTION ISSUES**

SPRING TERM 2011



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IN RE: STATUS REPORT OF THE GRAND JURY REGARDING PALM
BEACH COUNTY GOVERNANCE AND PUBLIC CORRUPTION
ISSUES

CHIEF JUDGE PETER D. BLANC, PRESIDING

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

I. GRAND JURY SUMMARY

The Grand Jury has been tasked and requested by State Attorney Michael McAuliffe with reviewing and reporting on the events since the April 9, 2010, Grand Jury Status Report/Presentation examining the progress regarding the sweeping ethics reforms ushered in following the May 21, 2009, Grand Jury Presentation. Since April 2010, sufficient developments and activity regarding ethics reforms have occurred to warrant review, evaluation and recommendation by this Grand Jury.

Shortly after the April 2010 Grand Jury Presentation, the initial Inspector General (IG) Committee (comprised of the five ethics commissioners, the state attorney and the public defender) evaluated and selected the initial inspector general. The newly selected IG started employment in June 2010. In the months that followed, the basic organizational work was commenced in terms of developing operating procedures, recruiting and hiring personnel and other start-up activities. One of the first issues facing the IG and the community was whether the IG (and the ethics commission) would also have jurisdiction over the 38 municipalities in Palm Beach County. In July 2010, the Board of County Commissioners (BCC) voted to put the issue on the ballot for the November 2010 election in the form of a charter amendment question.

In November of 2010, 72% of Palm Beach County voters approved the charter amendment extending the jurisdiction of the Inspector General and Palm Beach County

Commission on Ethics to the 38 municipalities within Palm Beach County. In addition to the overall vote, a majority of voters in each municipality approved the charter amendment which extended the ethics reforms.

On May 17, 2011, in response to the charter amendment, the BCC adopted a sweeping ethics reform ordinance implementing the charter amendment and following the voters' mandate to expand the ethics reforms to cover all municipalities in the County.

The expansion of jurisdiction of the Inspector General (IG) and the Commission on Ethics (COE) proved to be a significant test of the newly created ethics watchdog agencies. These two entities have vastly increased responsibilities in terms of the number of entities over which they have jurisdiction. This translates into the pressing need for a more developed operations infrastructure and the ability to prioritize referrals and investigations.

With the expansion of responsibilities come additional challenges. It will be necessary to meet the increased challenges of hiring appropriate personnel to appropriately staff the agencies. Furthermore, vigilance will be required to avoid attempts (real or perceived) by covered governmental entities to impede or insulate themselves from effective review by creating policies and procedures that create a chilling effect or an outright barrier to effective oversight by the IG or the COE.

II. BACKGROUND AND SCOPE

By the spring of 2009, Palm Beach County's elected leaders and public institutions faced an onslaught of doubt and alienation given numerous corruption prosecutions at the local level by federal authorities. Many residents openly expressed a fundamental loss of confidence in and a lack of support for local governing bodies. Cynicism took root and stayed.

In April of 2009, State Attorney Michael McAuliffe convened a Grand Jury to help address the ethical crisis facing the County. *See Spring 2009 Grand Jury Final Presentment dated May 21, 2009.* The 2009 Grand Jury was tasked with reviewing and addressing specific areas of

governance in Palm Beach County and with making appropriate findings and recommendations to improve Palm Beach County governance. State Attorney McAuliffe convened a second Grand Jury in April of 2010 to review the progress regarding the ethics reforms identified and recommended by the 2009 Grand Jury. *See Winter 2010 Grand Jury Final Presentment dated April 9, 2010.* This 2011 Grand Jury serves to review subsequent developments since the 2010 Grand Jury Report.

A Florida Grand Jury may make presentments (reports) and return indictments for offenses against the criminal laws, whether or not specific punishment is provided for the offense. 905.165 *Fla. Stat.* The Grand Jury is uniquely situated as the “guardian of all that is comprehended in the police power of the state.” *Owens v. State*, 59 So.2d 254 (Fla. 1952). Unlike a Federal Grand Jury, Florida Grand Juries can, and should, serve a dual purpose:

[Florida Grand Juries]... have a lawful function to investigate possible unlawful actions for all persons, private citizens and public officials alike and to return indictments when warranted, and also have a lawful and proper function to consider actions of public bodies and officials in use of public funds and report or present findings and recommendations as to practices, procedures, incompetency, inefficiency, mistakes and misconduct involving public officers and public monies.

Kelly v. Sturgis, 453 So. 2d 1179 (Fla. 5th DCA 1984).

The purpose of this Grand Jury is to identify and highlight recent developments regarding the ethics reforms, to assess the expanding watchdog and ethics entities in Palm Beach County and to make recommendations regarding those ongoing ethics reforms. This Grand Jury serves to measure the progress made and to suggest necessary course corrections to ensure that the reforms continue to effect positive change in the community. Finally, the Grand Jury also serves to provide independent, periodic examination of the efficacy of the IG’s office and the COE.

III. SUBSTANTIALLY COMPLETED REFORMS

The 2009 Grand Jury identified numerous County governmental policies and procedures

requiring reform including: (1) bond underwriting practices; (2) County commissioner discretionary funds; (3) governmental land transactions; and (4) existing criminal, ethics, and other public integrity laws. The 2009 Grand Jury went on to outline specific reforms in those areas of County governance that would benefit the public and help restore confidence in local governance. The 2010 Grand Jury then issued a Status Report on the adoption and implementation of the recommended ethics reforms. Within a period of a year almost all the reforms outlined by the 2009 Grand Jury had been adopted.¹

A. Bond Underwriting Procedures

In 2009, the Grand Jury identified the County's practice of awarding bonds through a rotating system of negotiated sales with bond underwriters to be costly, to lack transparency, and to undermine confidence in the bond underwriting process. The 2009 Grand Jury recommended several measures that could be implemented to resolve these issues. The 2010 Grand Jury report found that the BCC successfully implemented the recommendations necessary to address this area of County governance. As of the writing of this Grand Jury report, the Grand Jury finds that Palm Beach County has been successful in its attempts at addressing the issue of bond underwriting and future Grand Jury reports will not address the matter further absent any new developments requiring examination.

B. Commissioner Discretionary Funds

The 2009 Grand Jury evaluated a practice where County commissioners received discretionary funds generated through the Recreation Assistance Program (RAP) and the Infrastructure Discretionary Fund (Gas Tax). Although the funds were "laudable efforts and

¹ The County submitted to the Grand Jury a detailed memorandum which addressed completed and ongoing ethics reform efforts from the County's perspective. The memorandum also criticizes several aspects of the ethics reform process over the past year. While the Grand Jury's recommendations do not reflect or match the memorandum in numerous respects, it is attached for review. *See Exhibit 1 - County Attorney's Memorandum dated September 21, 2011.*

beneficial to the citizens of Palm Beach County,” the Grand Jury found that the mechanism of distribution was politicized and contributed to the view of these monies as commissioner “slush funds.” While approval of projects was by consent agenda, there had never been an objection to the passage of a discretionary fund project. The combination of total individual discretion and lack of oversight created a perception to the public that the commissioners could use those funds for political purposes. By the 2010 Grand Jury report, no new RAP or Gas Tax funding had been approved and the Grand Jury was satisfied that the recommendations made by the 2009 Grand Jury had been successfully implemented and that the problem of commissioner discretionary funding has resolved. The Grand Jury finds that Palm Beach County has successfully addressed the issue of commissioner discretionary funding, and future Grand Jury reports will not address the matter further unless a new mechanism giving commissioners total individual discretion in the allocation of tax or grant based funding is adopted.

C. Land Transactions

The 2009 Grand Jury identified the procurement and disposal of real property as another area of governance in need of reform. The land transaction process lacked accountability and transparency. The 2010 Grand Jury found that the measures that the BCC implemented in response to the 2009 Grand Jury recommendation “fulfill[ed] the spirit” of the 2009 Grand Jury’s recommendations. The 2010 Grand Jury commended the BCC for going beyond the 2009 Grand Jury report while emphasizing that there could never be too much transparency in the sale, purchase, and trade of real property. This Grand Jury finds that the ethical issues surrounding the processes involving the procurement and disposal of real property in Palm Beach County have been substantially addressed and do not warrant further attention from this Grand Jury.

IV. ONGOING ETHICS REFORMS

The 2009 Grand Jury found a strong perception of a disconnect between ethics and

governance in Palm Beach County and throughout the State of Florida. Beyond perception, a lack of ethics training and awareness created an atmosphere where questionable practices were deemed acceptable, if not necessary, to doing business with the government in Palm Beach County. The only county ethics ordinance in existence at the time was the Lobbyist Registration Ordinance (LRO). The LRO lacked clarity and a criminal punishment component. Furthermore, state ethics statutes (Chapter 112) also lacked (and still lack) an effective criminal punishment component.

The 2009 Grand Jury recommended that Palm Beach County adopt an ethics ordinance similar to the Miami-Dade Conflict of Interest and Code of Ethics Ordinance in order to begin to put teeth into an otherwise ineffectual County system of oversight. The 2009 Grand Jury further recommended specific methods of review, education, and enforcement in the areas of public employee conduct and governmental operations. The most significant reforms proposed by the 2009 Grand Jury were the creation of the Office of the Inspector General and a Commission on Ethics.

After a period of approximately one year, the 2010 Grand Jury reviewed the status of ethics reforms and commended the steps taken to improve county governance. Specifically, the 2010 Grand Jury lauded the creation of the COE and the IG's office by the BCC and recommended the expansion of the jurisdiction of these agencies to municipalities and other governmental entities located in Palm Beach County. The 2010 Grand Jury also recommended that the IG and COE issues be placed on the ballot in the form of a charter amendment ballot question to seek voter approval for these reforms. The purpose of the charter amendment recommendation was to seek voter approval to expand the reforms to municipalities and to make the ethics reforms a permanent part of the county charter and not subject to a future BCC's preferences.²

² The County Charter is the basic document of governance in Palm Beach County. The charter is the County's equivalent of a constitution.

On May 17, 2011, based on the amended Charter, the BCC passed a broad ethics ordinance defining and outlining the power of the County's Inspector General and Ethics Commission with jurisdiction over all of the County's cities and towns. The ordinance implemented the November 2010 election results where 72% of voters approved a charter amendment that extended the Inspector General and Ethics Commission's jurisdiction to municipalities and added those watchdog entities to the charter itself. *See Exhibit 2 – Supervisor of Election Results for November 2, 2010, Ballot Question.*

A. Inspector General's Office

The Office of the Inspector General (IG) was created in response to the 2009 Grand Jury Presentment's recommendations. *See Exhibit 3 – Ordinance No. 2011 – 009.* Originally created by the BCC through Article XII, Section 2-422, Palm Beach County Code, the Office of Inspector General (IG) is tasked with (1) providing independent oversight of county and municipal operations; (2) detecting and preventing fraud, waste, mismanagement, misconduct, and other abuses by elected and appointed officials and employees, agencies and instrumentalities, contractors, subcontractors, and other parties doing business with the County or a municipality and/or receiving County or municipal funds; (3) promoting economy, efficiency and effectiveness in government; and (4) conducting audits and investigations.

1. Organization

The IG's office is led by an Inspector General. In addition to the Inspector General, the IG's office currently has two full-time investigators, two intake review specialists, three contract oversight specialists, and four members of the audit staff. The IG anticipates its 2011 fiscal year budget to be approximately \$3.5 million dollars. With the expansion in responsibility to the 38 municipalities in Palm Beach County, it is anticipated that the IG's office will need additional full-time staff members to adequately complete its mission. *See Exhibit 4 – Office of the Inspector*

*General Outreach Pamphlet.*³

The IG's office is not limited to municipal or county government. Several special taxing districts have chosen to be subject to the IG's jurisdiction. The School Board has decided not to invite the IG's oversight, preferring instead to create its own internal auditing committee. *See Composite Exhibit 5 – Use the Inspector General, The Palm Beach Post, August 30, 2011; Minutes of August 31, 2011 Workshop; School Board Snubs County's Inspector General Services, Just Before Sit-down with County Commission, Sun Sentinel, September 1, 2011.* At the time of this Presentment, the Palm Beach County State Attorney's Office has approximately twelve open criminal investigations or prosecutions involving alleged financial misappropriations by various School District employees.

The Grand Jury recommends and urges the School Board to pursue negotiations to engage the IG to perform audit and watchdog functions.

2. Funding

The IG is funded by the County as well as by cities, towns, and other local entities that elect to be subject to IG jurisdiction. The IG's initial funding was a .25% (one quarter of one percent) fee on almost all new contracts entered into by the County; however, soon after the initial funding mechanism was passed, the County chose to pay the IG's budget out of general revenue and leave open the determination of how to reconcile the sources at a later point in time. Soon after the decision was made not to separately account for and segregate a dedicated funding stream for the IG, the issue of the cost of the reforms arose. Taking the budget from the general revenue fund masked the fact that the contract fee was supposed to act as a dedicated stream of revenue so that the IG budget did not compete with general revenue programs and services.

³ On September 12, 2011, the Palm Beach County Health Care District voted to pursue negotiations to engage the IG to perform audit and watchdog functions. Several other special taxing districts are considering seeking IG involvement.

The County ordinance adopted in May 2011 addresses current IG funding from both the County and the municipalities. Section 2-429 sets forth the current financial support and budgeting structure of the IG's office. Section 2-429(1) states that, pursuant to their annual budgeting processes, the County and each municipality shall provide "sufficient financial support for the IG's office to fulfill its duties." The county and municipalities must fund the office proportionately based upon the actual expenses of each governmental entity. The proportionate share is to be based upon each entity's actual expenses.

Section 2-429.1 sets forth the minimum level of IG funding (funding base) which is determined by the percentage of contract activity of the governmental entities subject to the authority of the IG. The funding base is set at .25% of the contracts included in the entity's actual expenses for purpose of the calculation in 2-429. Thus, the municipalities and the County both contribute proportionately, but not less than .25% of the amount of specified governmental contracts, to the IG. However, while the amount is benchmarked by a percentage of contract value, the actual funds are taken from general revenue.

The Grand Jury finds that a dedicated, separate funding stream provides the best method by which to support the IG operations. With the expansion of the IG's jurisdiction, the IG's fiscal demands will also increase. It is imperative that a permanent, dedicated funding mechanism be implemented in the near future. The issue is two-fold: The IG budget needs to be adequate to perform its functions effectively and it needs to be from a dedicated source. The IG should have a stream of base funding that does not compete with general revenue dollars and one that cannot be used by the BCC or a covered entity as the reason for cutting other areas of the budget. The intent of the original recommendation regarding IG funding was, and remains, that the cost of oversight is matched to the transaction cost of doing business with the governmental entity and not a general direct tax.

As a result, the Grand Jury recommends that the IG ordinance explicitly require that the funding source be a segregated and dedicated amount (.25%) for specified contracts entered into by covered entities and not the equivalent amount taken from general revenue of either the County or the municipalities.

3. IG Performance/Results

An ongoing and important issue is how to measure IG performance and results. The IG's contributions can be measured quantitatively by the number of investigations performed, the number of criminal prosecutions arising out of its investigation referrals, the number of contracts reviewed, the number of audits performed and, in theory, the net savings to the taxpayer.

Since its inception, the IG's office has performed twelve investigations. When criminal charges are warranted, the IG cooperates closely with the Office of the State Attorney to support criminal prosecution efforts. Three referrals to the State Attorney's Office have led to criminal prosecution. Of those cases, one case concluded with the defendant pleading guilty to a felony offense and the other two are currently pending. The IG's office currently is performing two audits and six contract reviews.

The IG's office also can serve as a check on governmental excesses through its extensive audit capabilities. Forensic auditing is a potentially critical and effective first-step in uncovering fraudulent financial activity within covered public entities. While the identification of fraud and waste potentially can be quantified, these watchdog functions, when publicized and productive, also have a significant deterrent effect. While it is not feasible to measure "loss" that never occurs because the oversight prevented the loss from happening, the benefit to the community is real and significant.

The Grand Jury recommends that the IG, in consultation with the IG Committee, develop accepted measures/standards of performance so that, over time, the community can make informed judgments about the IG. Continued public support for the IG will hinge on

the belief that the investments made in the IG are reaping sound returns.

4. IG Independence

The same ordinance re-drafting process that implemented the successful charter amendment and expanded the IG's jurisdiction to the municipalities also posed an early, serious threat to the powers of the IG. The initial threat to the independence of the IG's office came while the expanded scope of the office's duties and responsibilities were still being specifically defined (or, more accurately, re-defined). The IG drafting committee, charged with outlining the duties and responsibilities of the IG given the charter's expanded mandate for the IG, debated what some perceived as the overbroad powers of the IG. Some members of the drafting committee and their supporters sought to narrowly define the terms "abuse," "fraud," "misconduct," "mismanagement," and "waste," as used by the IG enabling ordinance. After months of contentious debate, the drafting committee forwarded the updated IG's ordinance to the BCC for consideration without the limiting definitions. *See Exhibit 6 - SA Michael McAuliffe's Letter to the IG Re-Drafting Committee Addressing Issue of IG definitions.*

The IG's jurisdictional reach has been expanded and the newly covered municipalities must adapt to the new system of independent oversight. Many municipalities view the addition of an external watchdog entity as an opportunity to gain a partner in eliminating government waste and identifying abuses. Other municipalities and covered entities are not as sanguine or positive about the new relationships. *See Exhibit 7 – IG Letter to IG Ordinance Drafting Committee dated April 5, 2011.* Despite the endorsement of the reforms and cooperation of the League of Cities, some municipalities are attempting to graft their own definitions onto the IG's operations. *See Exhibit 8 - Letter from League of Cities dated September 12, 2011.*

Specifically, several municipalities, taking the cue from the debate in the IG re-drafting process, are adopting local ordinances which contain definitions to terms that are used in the County ordinance to describe the IG's jurisdiction. The renewed attempts at the municipal level to

define terms like “abuse,” “fraud,” “misconduct,” “mismanagement,” and “waste,” can be seen as an attempt to re-visit a divisive issue which has been settled.

The Village of Tequesta was one of the first municipalities to attempt to define terms used by the IG in the course of the IG’s auditing function. On May 12, 2011, before the IG’s extended jurisdiction had been finalized, the Village of Tequesta had its first reading of ordinance 7-11 entitled “Definitions for Evaluation of Palm Beach County Inspection General Reports.” *See Exhibit 9 – May 12, 2011 Village of Tequesta Agenda.* The second reading of the ordinance was on June 9, 2011. The Town of Manalapan also adopted a similar ordinance. *See Exhibit 10 – May 20, 2011 Town of Manalapan Agenda.* The Town of Mangonia Park, Palm Beach Gardens, and Palm Beach County all have either adopted or are considering similar limitations. *See Exhibit 11 – Town of Mangonia Park Ordinance No. 2011-02; See Exhibit 12 – Minutes of July 19, 2011 Palm Beach Gardens City Council Meeting.* These measures all seek to define terms such as “fraud,” “waste,” “mismanagement,” “abuse,” and “misconduct.” While these definitions ostensibly serve to inform employees subject to the IG’s review of the conduct that will be examined during an IG inquiry or matter, the proposed definitions have the real potential of restricting the IG in its investigations.

Many of the definitions contain words that would be commonly found in criminal statutes or ordinances including qualifiers such as “intentionally,” “willingly,” “wantonly” or “recklessly.” None of these qualifying terms appear in the IG’s enabling ordinance. One of the IG’s primary roles is the detection of governmental waste and mismanagement and not criminal investigations. While an employee may be acting negligently or in a manner that needs correction, the defining down of what constitutes waste, fraud or abuse will result in underreporting and confusion. It stifles the entire oversight process. If various covered entities have multiple and varying definitions of these terms, effective review becomes impossible. A fundamental need exists for uniform terminology to be used in the IG auditing and investigative process. The

authority performing the auditing (IG) is in the best position to determine the definitions of the terms it intends to employ in its evaluation. This position is consistent with the position taken by the Association of Inspectors General. *See Exhibit 13 – Letter from Association of Inspectors General dated April 1, 2011.*

The Grand Jury finds that municipal attempts to define terms found in the County IG ordinance pose a serious risk to the operational independence of the IG. Such attempts run contrary to the intent of the ethics reforms for effective, transparent and independent review of local governmental activity. The IG should not be forced to rely on or accept municipality created term definitions. The Grand Jury recommends that covered entities not adopt or attempt to impose any individual (and potentially different) definitions of waste, fraud, abuse, etc., as these terms already are contained in the County ordinance and are not difficult to understand.

Further, some covered entities, including the County, are drafting policy and procedures (PPM) for their employees to follow when responding to the IG's interview or information requests. Some subject agencies are also seeking to create internal policies and procedures (PPM) for employees to follow in response to IG inquiries. These PPMs carry a high risk of discouraging open and honest communication and cooperation with IG reviews and investigations. Both Palm Beach Gardens and Palm Beach County have drafted proposed policies for employees to follow when contacted by the IG. These draft policies require the IG to announce its intention to meet with an employee, permit the employee to determine the reason for the contact, and require the IG to make an appointment through the employee's supervisor. *See Composite Exhibit 14 – PBC PPM Draft Procedures for Responding to Inquiries from the Inspector General; PBC PPM Draft Reporting Procedures to the Office of Inspector General.* Furthermore, the County's draft PPM permits the employee to have a representative, co-worker, or attorney present during the interview, emphasizes that employees should have any interaction with the IG recorded or

transcribed, and reminds the employees that they have a right to refuse to answer questions which may criminally incriminate themselves.

Further, if a lower-level employee wishes to meet with the IG to report malfeasance of a supervisor, the draft PPM would require the employee to schedule the meeting *through the individual being reported*. This would chill, if not completely eliminate, reporting of potential improper behavior of supervisors by subordinate employees. The IG's office performs an independent auditing and oversight function. The PPM's advice regarding representation during an IG interview and its affirmative steering regarding the circumstances of any IG interview conveys a clear and misleading message to the employee that the IG is conducting a criminal investigation.

If covered entities want PPMs in place to coordinate with the IG's office, the PPM should be created in full partnership with the IG's office to provide appropriate information for the employee while maintaining the effectiveness of the IG's investigative authority. Indeed, the IG's office has already created written materials to distribute to covered entities to assist them with educating their employees as to what to expect during meetings with the IG. *See Composite Exhibit 15 – What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Investigative Staff; What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Audit Staff; What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Contract Oversight Staff Member.*

The Grand Jury finds that the draft PPMs developed by the covered entities - in their present form - are counter-productive and risk thwarting the IG's appropriate investigatory and audit authority. The Grand Jury recommends that any policy or practice memoranda (PPM) drafted by the County or municipality regarding IG interviews or requests mirror the substance and approach of the IG documents.

B. Commission on Ethics

Like the IG, the Palm Beach County Commission on Ethics (COE) was created in response to the recommendations contained in the 2009 Grand Jury Report and came into existence on May 1, 2010, pursuant to Palm Beach County Code 2-254. *See Exhibit 16 – Commission on Ethics Enabling Ordinance.* Unlike the forensic “auditing” and pro-active investigative role that the IG performs, the COE is charged with reviewing requests for information, evaluating requests for and rendering advisory opinions, and enforcing the County Code of Ethics, post-employment, and lobbyist regulation ordinances. To accomplish these goals, the COE conducts ongoing ethics educational programs, does community outreach, issues advisory opinions, and enforces conflict of interest and financial disclosure laws. The COE is comprised of five volunteer members serving staggered terms. COE commissioners are appointed by the following entities or groups: The President of the County Association of Chiefs of Police, the President of the Hispanic Bar Association of Palm Beach County, the President of the F. Malcolm Cunningham, Sr., Bar Association, the President of the County Bar Association, the President of Florida Atlantic University, the President of the Palm Beach Chapter of the Florida Institute of Certified Public Accountants, and the Board of Directors of the Palm Beach County League of Cities, Inc. While these entities are the source of the appointments, the ethics commissioners are not representative in duties and exercise independent judgment as to COE matters.

1. Organization

The first year of COE operation focused on building the ethics commission’s office. *See Exhibit 17 – Palm Beach County Commission on Ethics 2010 – 2011 Annual Report.* In May 2010, the office consisted of an Executive Director and five volunteer commissioners. Since May 2010, the COE has hired an administrative assistant, an investigator and a part-time research assistant. Staff counsel was retained in early 2011. With the addition of 38 municipalities to the

COE's jurisdiction, it is anticipated that the COE will need to hire another full-time investigator to perform its functions.

The COE also instituted a volunteer advocate program in conjunction with the Legal Aid Society of Palm Beach County. Currently, 15 volunteers consisting of former prosecutors and public defenders have volunteered to process complaints pending before the COE on a pro bono basis. According to the COE, it has accumulated a \$67,000 operating reserve in the 2009-10 fiscal year, and anticipates a similar operating reserve during the 2010-11 fiscal year.

2. Funding

The COE is funded by the BCC. The COE was allocated an initial start-up funding budget of \$180,000 for all COE operations for the partial 2009-10 fiscal year. COE funding is obtained through budgetary appropriations of the County; however, the COE may accept grants, contributions, or gifts from any other agency that has not entered into a contract or transacted business with the County. The COE may accept funding from an entity that does contract with the County if the BCC approves the special funding.

According to the COE, the May 2011 County Ordinance and the June 1, 2011, adoption of a comprehensive new gift ordinance will cause the COE to prospectively address significantly more conflict of interest and financial disclosure issues than it did in its first year of existence. Currently, the COE is responsible for the County, the 38 municipalities in the County, and several other entities that have consented to its jurisdiction. The COE also is in negotiation to have jurisdiction over several other local governmental entities. The County has numerous CRAs performing governmental functions that are outside the ambit of the COE's oversight. Negotiations will need to continue to refine the role of the COE with these other entities.

The Grand Jury finds and recommends that staffing, and therefore funding, will have to be evaluated on an ongoing basis to ensure that there are sufficient resources to continue to address the issues presented to the COE in a timely fashion.

3. Performance

The COE's current focus is on training and advising both public officials and the public at large about the applicable ethics and gift ordinances. The COE has created a hotline that fields inquiries from the general public as well as from individuals subject to the COE's jurisdiction. In 2010, the COE released approximately 40 written ethics advisory opinions. As of August 2011, the number of written advisory opinions had grown to well over 100. As of August 17, 2011, the COE has conducted over 120 ethics training sessions of county and municipal employees and officials.

The COE also launched its website in 2010, where most advisory opinions, relevant ordinances and codes, and links to contact the COE to schedule training sessions can be found. In April 2011, the COE website was visited over 29,000 times, nearing 1,000 visits per day.

The COE also performs its own investigations. Investigations can be initiated either by mail or through information left on the COE's hotline. The COE has investigated 29 ethics complaints since May of 2010. Of those complaints, 9 were found to be legally sufficient and became the subjects of formal investigations while 20 were dismissed without further review for lack of legal sufficiency. All of the legally sufficient claims were later dismissed by the COE after a probable cause hearing. Two matters resulted in a letters of instruction being issued to the respondents by the COE. In addition to citizen-initiated complaint proceedings, COE staff commenced preliminary inquiries into 25 matters not originated by citizen complaint. Of those self-generated matters, 17 were closed as not legally sufficient and 4 became the basis for COE initiated complaints. *See Exhibit 18 – COE Memorandum dated September 14, 2011.*

Beyond the raw numbers, training sessions appear to be the COE's main emphasis. Currently there are approximately 20,000 employees, including appointed and elected officials, who have to comply with the ethics and gift ordinances. The COE must educate them with presentations and training sessions, advertising, publications dealing with the rules and

regulations in place, and official ethics opinions. According to the COE, during each training session, employees and officials are provided with the core ethics concepts including conflict of interest, prohibited contractual relationships, misuse of public office, as well as gift law prohibitions and reporting requirements. Furthermore, the COE has a reference pamphlet that it distributes as part of its ethics training. *Exhibit 19 – Ethics Pocket Guide*. The COE intends to further expand its ethics training by developing an online ethics-training/quiz module that will provide employees, officials, and the public with an additional resource to examine issues that have come before the commission as requests for advisory opinions or frequently asked questions.

The Grand Jury finds that the COE activities match its mandate thus far. The Grand Jury recommends that the COE’s online ethics-training/quiz module be integrated into the mandatory training sessions provided to public employees.

C. Code of Ethics

The Palm Beach County Code of Ethics (Code) was adopted pursuant to Florida Constitution, Article VIII, Section 1(G); Florida Statutes, ch. 125, and the Charter of Palm Beach County. *See Exhibit 20 – Palm Beach County Code of Ethics effective June 1, 2011*. The Code provides for more stringent ethics standards than those outlined in §112.326 *Fla. Stat.* The Code is in addition to any state and federal ethics laws as well all local laws, rules, regulations and policies. The COE is the main entity charged with both educating covered employees about the Code and enforcing the provisions of the Code.

For the Code to be an effective tool, it is important that it be drafted with sufficient clarity to be understood by the thousands of employees governed by it, yet detailed enough to sufficiently address the myriad of ethical concerns that can arise in the scope of governmental service. For example, significant discussion occurred regarding the gift limitations after the initial version of the Code was adopted. One issue involved the original reporting requirements (i.e., reporting any gift from a non-family member over \$100 regardless of whether the person giving

the gift has any connection or possible relationship with the covered entity). In response to this ongoing discussion, the COE re-drafting process resulted in modifying the gift reporting requirements to address these concerns.

Also, while one of the duties of the COE is to interpret and issue advisory opinions as to the application of the Code to specific situations, if a particular ethical issue repeatedly is brought to the attention of the COE through inquiries, it should be a goal of the COE to address the issue in the Code either through a proposed change in the Code itself or clear direction through its advisory opinions.

The Grand Jury finds that the Code is too new to be judged for clarity and enforceability. The Grand Jury recommends that the Code be evaluated in 2012-13 once employees and the COE have had the opportunity to both conform conduct and scrutinize behavior.

D. Statewide Anti-Corruption Reforms

Several anti-corruption bills were introduced to the Florida Legislature in the 2011 session. The vast majority of the proposed bills were not passed by the Legislature. A brief summary of the relevant legislation is discussed below.

The “Restoration of Public Trust” legislation originally drafted by State Attorneys Michael McAuliffe and Mike Satz was introduced as SB 902. It died in the Legislature in the 2011 session. A much more limited HB 1301 modified Florida Statute 125.69 to permit counties to specify, by ordinance, that a violation of any provision of a County ordinance imposing standards of conduct and disclosure requirements is punishable as a first-degree misdemeanor. *See Exhibit 21 – HB 1301 modifying §125.69.* This generally followed the 2010 Grand Jury’s recommendation to seek increased penalties for ethics violations and enhance the punitive effect of state prosecutions of violations of County ethics ordinances.

The Inspector General also succeeded in obtaining through legislation an exemption from the Public Records Act for active IG investigations through CS/HB 667. *See Exhibit 22 – CS/HB 667.* This Public Records exemption allows the IG to perform full and thorough investigations without the danger of compromising the integrity of an ongoing investigation.

SB 734, again containing language originally drafted by State Attorneys Michael McAuliffe and Mike Satz, was a bill providing for the reclassification of criminal offenses committed “under color of law.” The bill enhanced penalties for public servants who use their position to commit a criminal act. *See Exhibit 23 – SB 734.* The bill would have reclassified an existing crime, committed through the use of a public office, one degree higher (more serious) and increased the sentencing level. This bill followed the recommendation of the 2010 Grand Jury. This legislation would have been a significant weapon in the state prosecutor’s anti-corruption “toolbox.” Unfortunately, the bill died in committee.

House Bill 585 and Senate Bill 1076 would have provided for a criminal sanction when a public servant purposefully failed to disclose a financial interest or a future financial benefit for themselves or a relative in a matter falling within the scope of their duties when the disclosure is otherwise required by state law or ordinance. *See Composite Exhibit 24 – HB 585; SB 1076.* This bill did not pass the Legislature.

The Grand Jury finds that these anti-corruption measures would constitute important tools in effectively combating corruption and public sector graft in Florida. As such, the Grand Jury recommends that the Legislature pass significant anti-corruption legislation in the 2012 session. Strong measures exist; the Legislature needs to find the will to make them law.

E. Triad of Checks and Balances

Palm Beach County is now served by at least three separate and distinct state or local entities that work to battle the corruption that has been so endemic to the County over the past

decade.⁴ The COE serves to advise and educate governmental employees and the public at large to the ethics and gift laws, interpret changes in the law, and publish opinions to further its mission of outreach. The IG serves to independently scrutinize and evaluate the way government transacts its business and make recommendations regarding efficient government practices. The IG's role is to prevent waste and government mismanagement in the public sector. The Office of the State Attorney has a dedicated Public Corruption Unit that investigates and criminally prosecutes corruption-related offenses in Palm Beach County. Both the COE and the IG can, and do, refer cases to the Palm Beach County State Attorney's Office if a criminal investigation is warranted. Conversely, if the State Attorney's Office reviews a potential criminal matter and determines that filing criminal charges is not warranted, but that review is warranted by either the IG or the COE, the information can be, and is, forwarded to either entity for further action. This triad structure has only been finalized in the past few months, so it is still too soon to accurately evaluate the new system of checks and balances. The Grand Jury finds that this complementary triad of ethics and corruption oversight and enforcement has great potential and is to be commended. Comprehensive ethics reform in Palm Beach County is a reality.

One of the challenges will be to measure the effectiveness of this new ethics and oversight paradigm. While the numbers of individuals arrested and charged with corruption related offenses is certainly one yardstick, the ultimate goal of all three of these organizations is to change the "culture of corruption" in Palm Beach County so that public officials and business entities dealing with the government are aware of the ethics rules and conform their behavior accordingly. Unfortunately, even in the middle of these ethics reforms, a fourth county commissioner pled guilty to state extortion, perjury and sunshine law violations. Future efforts must focus on

⁴ Other entities also provide some watchdog and audit functions including the Clerk and Comptroller. The Clerk started a guardianship fraud hotline to receive complaints and information regarding abuses in the use of guardianship funds. That information is forwarded to the appropriate law enforcement authorities for follow-up. The Clerk is to be commended for this type of initiative.

creating a mechanism to judge the reforms in practice and also ensure that covered entities do not avoid accountability by practices that frustrate the ability of the IG and COE to fully investigate potential violations.

V. CONCLUSION

Palm Beach County has made significant progress in ethics reform; however, these reforms, measured by both the public's perception and the working reality of government, are not a point in time, but a process. Reform involving real change is not easy. The community is just now beginning to recognize the path to becoming "Accountability County" involves making investments and commitments over a period of time. Just as Palm Beach County's reforms were loosely patterned after the Miami-Dade model, other counties, or the State itself, may embrace future reforms on the Palm Beach County model if the community remains committed to its reforms.

Two and a half years ago, the public landscape of the County looked much different. The ethics reforms, initially adopted and implemented in 2009, already have been expanded and modified. The County must now settle into the new "normal" which is a more accountable and efficient government – a government that now has several authorities committed to guide and advise, but also able to investigate and punish.

DISTRIBUTION REQUEST

The Grand Jury requests that this Presentment be furnished to the following:

Hon. Rick Scott, Governor
Hon. Jeff Atwater, Chief Financial Officer
Hon. Pam Bondi, Attorney General
Hon. Mike Haridopolos, Senate President
Hon. Dean Cannon, House Speaker
Hon. Lizbeth Benacquisto, State Senator
Hon. Ellyn Bogdanoff, State Senator
Hon. Larcenia Bullard, State Senator
Hon. Joe Negron, State Senator
Hon. Maria Sachs, State Senator
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Hon. Sharon Bock, Clerk & Comptroller
Hon. Gary R. Nikolits, Palm Beach County Property Appraiser
Hon. Ric Bradshaw, Palm Beach County Sheriff
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Hon. Steven L. Abrams, County Commissioner
Hon. Paulette Burdick, County Commissioner
Hon. Jess R. Santamaria, County Commissioner
Hon. Priscilla Taylor, County Commissioner
Robert Weisman, County Administrator
Palm Beach County Criminal Justice Commission

EXHIBIT LIST

Exhibit 1	County Attorney's Memorandum dated September 21, 2011
Exhibit 2	Election Results for November 2, 2010 Ballot Question
Exhibit 3	Ordinance No. 2011 – 009
Exhibit 4	Office of the Inspector General Outreach Pamphlet
Exhibit 5a	Use the Inspector General, The Palm Beach Post, August 30, 2011
Exhibit 5b	Minutes of August 31, 2011 School Board Workshop
Exhibit 5c	School Board Snubs County's Inspector General Services, Just Before Sit down with County Commission, Sun Sentinel, September 1, 2011
Exhibit 6	SA Michael McAuliffe's Letter to the IG Re-Drafting Committee Addressing Issue
Exhibit 7	IG Letter to IG Ordinance Drafting Committee dated April 5, 2011
Exhibit 8	Letter from PBC League of Cities dated September 12, 2011
Exhibit 9	May 12, 2011 Village of Tequesta Agenda
Exhibit 10	May 20, 2011 Town of Manalapan Agenda
Exhibit 11	Mangonia Park Ordinance No. 2011-02
Exhibit 12	Minutes of July 19, 2011 Palm Beach Gardens City Council Meeting
Exhibit 13	Letter from Association of Inspectors General dated April 1, 2011
Exhibit 14a	PBC PPM Draft Procedures for Responding to Inquiries from the Inspector General
Exhibit 14b	PBC PPM Draft Reporting Procedures to the Office of Inspector General
Exhibit 15a	What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Investigative Staff
Exhibit 15b	What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Audit Staff
Exhibit 15c	What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Contract Oversight Staff Member
Exhibit 16	Commission on Ethics Enabling Ordinance
Exhibit 17	Palm Beach County Commission on Ethics 2010 – 2011 Annual Report
Exhibit 18	Commission on Ethics Memorandum dated September 14, 2011
Exhibit 19	Commission on Ethics Pocket Guide
Exhibit 20	Palm Beach County Code of Ethics effective June 1, 2011
Exhibit 21	HB 1301 modifying §125.69
Exhibit 22	CS/HB 667
Exhibit 23	SB 734
Exhibit 24a	HB 585
Exhibit 24b	SB1076

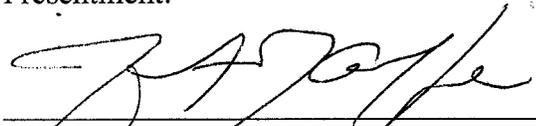
CERTIFICATION OF PRESENTMENT

The Grand Jury respectfully submits this Presentment this the 26 day of September, 2011.



FOREPERSON OF THE GRAND JURY

As authorized and required by law, we have advised the Grand Jury returning this Presentment.



MICHAEL F. McAULIFFE
STATE ATTORNEY
FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA



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CHIEF ASSISTANT STATE ATTORNEY



JOHN L. PAINOFIELLO
ASSISTANT STATE ATTORNEY