

ITEM #121⁽²⁾

**ADDITIONAL MATERIAL
10:00 A.M. REGULAR MEETING**

AUGUST 22, 2017

**SUBMITTED AT THE REQUEST OF
OFFICE OF INTERGOVERNMENTAL AFFAIRS
AND PROFESSIONAL STANDARDS**



OFFICE OF INTERGOVERNMENTAL AFFAIRS AND PROFESSIONAL STANDARDS
115 S. Andrews Avenue, Room 426 • Fort Lauderdale, Florida 33301 • 954-357-7575 • FAX 954-357-6573

August 21, 2017

MEMORANDUM

TO: Honorable Mayor and Members
Board of County Commissioners

FROM: Edward G. Labrador, Esq. 
Director

RE: **Agenda Item 121 – Meeting of August 22, 2017; Response to Email of Michael Rajner**

This memorandum is in response to an email (see attached) sent to you this morning by Michael Rajner, Vice-Chair of the Human Rights Board, expressing certain concerns with Agenda Item 121.

1. Quasi-Judicial Hearings

In his comments, Mr. Rajner suggests that quasi-judicial hearings (as opposed to “meetings”) are considered “special meetings”, and therefore would be capped under the proposed policy governing special meetings. The scheduling and holding of a quasi-judicial hearing before the Human Rights Board (HRB) is governed specifically by the provisions of §16½-47(e)(1), §16½-48(b) and §16½-49, Broward County Code, and are not considered nor counted as special meetings. Normal business meeting requirements and the proposed special meetings policy will apply only when the HRB meets in their advisory capacity, not when holding required hearings under the Human Rights Act.

Mr. Rajner also states the Human Rights Board was not updated on changes to the Sunset Review recommendations before appearing on the Commission’s agenda. As we noted during our briefing with Commissioners in June, meetings were held with each advisory board to discuss the changes to general policies and the recommended changes, if any, to each particular advisory board’s creating legislation. As Mr. Rajner’s email reflects, the HRB unanimously approved this office’s recommendation of increasing the number of regular meetings from 4 to 6. With the addition of two special meetings the HRB may meet in their advisory capacity up to 8 times during a calendar year. In 2015, the HRB met a total of six times with a seventh meeting cancelled due to a lack of quorum. In 2016, the HRB met six times – inclusive of two special meetings; the HRB also held two workshops where board members’ attendance was not required.

2. Communication with Outside Entities

Mr. Rajner expresses a concern about the following statement: "Advisory board members shall not take it upon themselves to relay the advisory board’s position to entities outside county government, without the approval of the Board of County Commissioners."

Broward County Board of County Commissioners
Mark D. Bogen • Beam Furr • Steve Geller • Dale V.C. Holness • Chip LaMarca • Nan H. Rich • Tim Ryan • Barbara Sharief • Michael Udine
Broward.org

This sentence, however, has been included in the Commission's approved advisory board policies since 2009. It is specifically designed to prevent advisory board members, whose primary role is to advise the County Commission, from relaying positions not approved by, or which are contrary to the policies of, Board of County Commissioners. Once the Commission has accepted a recommendation communicated by an advisory board, members may then relay that position to outside organizations. In addition, nothing in the policy prohibits an advisory board member from researching information or speaking to community partners or stakeholders about ideas to improve government facilities, services or programs, and to bring those ideas to the advisory board on which they serve for the purpose of making a recommendation to the County Commission.

3. Attendance Policy

Mr. Rajner suggests there is no policy requiring appointees to be physically present at an advisory board meeting. Section 1-233(e), Broward County Code, establishes attendance requirements for advisory board members. A failure to comply with these attendance requirements will generally result in a member's removal from an advisory board. More specifically, paragraph (4) of this section requires that an advisory board member notify the board's coordinator at least two business days prior to a scheduled meeting, as to whether the member will attend the meeting. This requirement exists to ensure there is sufficient time to cancel an advisory board meeting, if a quorum will not be physically present. Moreover, §1-233(g), Broward County Code, in accord with state law, makes its abundantly clear that only after a physical quorum is obtained may other members not present participate by telephone. Thus, an advisory member's physical presence at meetings is specifically favored, if not otherwise required.

Additionally, the Commission's approved Advisory Board Policies address removal from advisory boards because of attendance (Section G). The Advisory Board Policies and §1-233, Broward County Code, are given to new and reappointed board appointees. The advisory board coordinators review these policies with new and reappointed members, and recently the OIAPS Boards Administrator has conducted workshops to refresh advisory board members about their board roles and responsibilities, including attendance.

4. Excused Absence because of Subpoena

Mr. Rajner indicates concern with "not count[ing] a member's absence as excused if they are subpoenaed as a witness, and not a party in a case." Under present advisory board policy and §1-233, any board member subpoenaed to appear in a court proceeding, whether a party or witness, will be excused from attending their conflicting advisory board meeting. The proposed change to the policy is to allow excused absences when an appearance at a proceeding is necessary as a result of a court order or other notice and the member is a party to that proceeding.

Please feel free to contact our office should you have any questions.

EGL:DAS/cml
Attachment

Labrador, Edward

From: Michael Emanuel Rajner (HRB) <michael.rajner@gmail.com>
Sent: Monday, August 21, 2017 11:51 AM
To: Sharief, Barbara; Furr, Beam; Ryan, Tim; Rich, Nan; Holness, Dale; Lamarca, Chip; Geller, Steve; Udine, Michael; Bogen, Mark
Cc: Labrador, Edward; Henry, Bertha; Coffey, Joni Armstrong; Meyers, Andrew; Katzman, Adam; McGovern, Barbara; Sainvil, Daphnee; Garcia, Orlando; Carter, Kristin
Subject: Agenda item 121 - Sunset Review

Good morning Mayor, Vice Mayor. and Commissioners:

I'm out of town and unable to attend tomorrow's commission meeting and wanted to share with you some input, on agenda item 121 as it relates the Broward County Human Rights Board.

Last year during my service as chair of the Human Rights Board, I had a opportunity to participate in the above process, which is a major undertaking. As this agenda item only became public on Thursday, and includes verbiage that was not presented to the Human Right Board, my thoughts are that as an individual who has the privilege to serve on that county advisory board.

At our September 12, 2016 Human Rights Board meeting, OIAPS shared their recommendation, which they acknowledged was still undergoing additional review before going to the BOCC and we since did not receive any update.

Below is an except of the meeting minutes with the recommendation that never discussed eliminating the ability of meetings to exercise quasi judicial powers to being special meetings or capping the number of special meetings.

Sunset Review Recommendations:

9. NEW BUSINESS ♣ Presentation on Sunset Review recommendations by Daphnee Sainvil, Office of Intergovernmental Affairs and Professional Standards.

- Recommendation: Meetings will be capped at six (6) annually. Based on the "special" meetings scheduled, six meetings per year is reasonable. When boards meet quarterly, two consecutive absences or two in a calendar year, have the member removed automatically from the board. Increasing the number of meetings to six (6) annually, will allow for three consecutive absences or four in a calendar year. The ordinance will be revised to reflect the number of annual meetings. Subsequent to County Commission approval, the bylaws will be revised, accordingly.
- Recommendation: Proposed merger of HRB with Diversity Advisory Council has been withdrawn.

MOTION by Ms. Shaw to support OIAPS recommendation of the 2016 Sunset Review to amend meeting frequency. Seconded by Mr. Milford. Passed Unanimously.

My primary concern is, I object to the recommendation's elimination of quasi-judicial meetings from being called as special meetings, and capping the number of special meetings. I believe for someone who was the victim and discrimination and took the time to learn of the Human Rights act and to file a complaint, they should not have to wait until the board's next scheduled meeting, currently every 3 months, to have the board to either support or reject a hearing panel's recommendation. Having a complaint resolved quicker, would help both parties move on, and hopefully forward, with their lives. A complaint on housing where one was forced to move and find new housing because of race, color, national origin, religion, sex, familial status, disability, age, marital status, political affiliation, sexual orientation, pregnancy, gender identity or expression.

Last year, I encouraged a couple to file a complaint when they were targeted for being a black lesbian couple caring for a youthful family member, and forced to moved. I remember sitting with the one partner in my apartment while I printed out the complaint forms for her. When you have limited income and need to financial afford for an unplanned moved, its take time for that family to fully recover. Thankfully I case I speak of was settled quickly, but this was every case.

For the OIAPS recommendations that relate to Broward County Board Policy changes, I have a few concerns or questions.

- In the new language below, I often hear that we have a first amendment right to speak with commissioners, but this policy seems to contradict what I have heard from people from the county for several years. Is the policy below consistent with our individual First Amendment rights to speak with elected officials? This policy would prohibit any appointee to ever reach out to a commissioner on any matter, even their appointing commissioner.

"Nothing in this policy shall be construed to prohibit an advisory board member from meeting or communicating with his or her appointing Commissioner, or any other County Commissioner when requested by the Commissioner's office about matters concerning the advisory board on which the member serves. However, no advisory board member shall communicate with a Commissioner in connection with quasi-judicial matter until a final order has been rendered or as to any other proposal or recommendation that will foreseeably come before the advisory board on which the member serves for the purpose of influencing, convincing, or persuading the Commissioner to support or oppose the proposal or recommendation prior the advisory board's action on such proposal or recommendation."

- I have no objections to the proposed language as it relates to quasi-judicial activities.
- I have concerns with this section in policy as it relates to an advisory board in the process of adopting recommendations: "Advisory board members shall not take it upon themselves to relay the advisory board's position to entities outside county government, without the approval of the Board of County Commissioners."

Our meetings are public meetings and our actions are not shielded from the public. This section of policy could potentially prohibit an advisory board member from learning more about an issue or matter with community stakeholders for matters outside of the quasi-judicial role.

- While there is nothing in policy, there should be something in policy to require appointees to be physically present for a minimum number of meetings, this would be beyond any existing attendance requirement. While I support appointees the ability to participate via telephone on

a limited basis to ensure participation, for the purposes of how critical it is to achieve quorum of those physically present in order to conduct a meetings, having the presence of members in the room is essential. While I don't have any specific language to suggest, I do recommend something to be included to articulate this expectation. This is something that should also be included in any advisory board member orientation. Just this year, we first received the online handbook on advisory boards.

Proposed New language for excused absences:

I'm very supportive of the inclusion of a member of a domestic partner to have their domestic partner's family to be recognized in policy. These recommendations were initially raised by Wilton Manors Commissioner Julie Carson when I shared with her the county's existing policy on advisory board attendance. The city adopted their own policy using much of the county's as a model.

I'm also very supportive of OIAPS to recommend to expand excused absence as it relates to one's health, and for some of the county's advisory boards, this is extremely important.

I am concerned with the item which appears to not count a member's absence as excused if they are subpoenaed as a witness, and not a party in a case.

For Section K - Meetings of the changes to the Broward Board Policy, I stated my concern above with objection to the change in special meetings and quasi-judicial meetings. Quasi-judicial meetings should also be outside of the cap on special meetings. While I understand accounting for the investment of human resource time for these meetings, I believe more focus on criteria for special meetings should out-way focus on a cap.

Please let me know if you have any questions to the above.

Thank you for your time and consideration of my concerns.

Michael Emanuel Rajner, BSW