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**I N T E R O F F I C E   M E M O R A N D U M**

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**To:** Board of County Commissioners  
**From:** David Migut, County Attorney *DM*  
**Copy:** Joy Andrews, County Administrator  
**Date:** December 1, 2023  
**Subject:** Decorum and Civility

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Pursuant to request, I have drafted this memorandum to summarize the various areas of the Rules and Policies of the St. Johns County Board of County Commissioners (“Board Rules”) that address Decorum and Civility. An Executive Summary, which attempts to synthesize the relevant rules as succinctly as possible, is included immediately below, followed by a more thorough Analysis and a discussion of other relevant laws to be aware of, especially in light of upcoming elections. Finally, an Appendix, which contains the full text of the applicable Board rules cited herein, is attached to the memorandum.

**I. EXECUTIVE SUMMARY**

The following points are explained in more detail in Sections II and III, below. They are summarized in bullet format here for ease of reading.

- The Board expressly recognizes in its Board Rules that promoting and preserving decorum and civility best enables the Board to fairly and expeditiously conduct the business of the County.
- The Chair is vested with the authority to maintain order and decorum in general during Board meetings and to enforce the Board Rules related to Decorum and Civility.
- Commissioners shall not delay or interrupt the proceedings or peace of the Board, nor disturb any other Commissioner who is speaking.
- Commissioners shall not refuse to obey the orders of the Board or its Chair.

- Commissioners shall not use unbecoming, abusive, or unparliamentary language while speaking.
- Commissioners shall avoid commenting on personalities or character of other Board members.
- Commissioners shall not interrupt another Commissioner who is speaking unless attempting to invoke a point of order for a violation of a Board rule or failing to maintain proper decorum.
- Such a point of order should be ruled upon by the Chair, and the Chair may consult with the Vice-Chair and the County Attorney, as needed.
- Any Commissioner may appeal the decision of the Chair regarding violation of a Board Rule or failure to maintain proper decorum, in which case a majority vote of the Board shall conclusively determine the ruling appealed.
- No person, including a Commissioner, shall disrupt a Board meeting by making personal, impertinent, or slanderous remarks.
- No person, including a Commissioner, shall disrupt a Board meeting with boisterous behavior.
- Any person, including a Commissioner, who disrupts a Board meeting in either fashion may be removed from the meeting by the Sheriff's office. Such removal may be requested: 1) by the Chair in his/her discretion, 2) by consensus of the Board, or 3) by the Sheriff's office if there is perceived to be an immediate threat to any person.
- If a Board Member is removed from a meeting, it is recommended that the meeting be recessed until such time as decorum can be reestablished and the Board is once again ready to proceed with all Board Members.
- Commissioners must not use their official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof. Additionally, Commissioners are prohibited from participating in any political campaign for an elective office while on duty.
- Commissioners are prohibited from soliciting or knowingly accepting any political contribution in a government-owned building.
- Commissioners are prohibited from using the Government Access Channel (GTV) to endorse an issue, candidate, specific person, company or brand name product for consumer use.

## II. ANALYSIS

Decorum and Civility provisions appear in multiple areas of the Board Rules, with the primary substantive provisions found in Part 4 of Chapter 4, which is appropriately titled, "Rules of Decorum and Civility." Two important rules regarding the procedure for maintenance and enforcement of decorum are found in Part 2 of Chapter 4, however, which establish the duties of the Chair and Vice-Chair. First, Rule 4.201.E states that the Chair's duties as the Presiding Officer include maintaining order and enforcing the

rules of decorum and discipline.<sup>1</sup> Second, if any parliamentary issues arise in a meeting, Rule 4.202 states that the Vice-Chair shall serve as the County Official who shall advise the Chair on parliamentary issues and shall rule on all questions of order and priority of debate, although the Vice-Chair may ask the advice of the County Attorney.<sup>2</sup> After a ruling by the Chair on a parliamentary issue, pursuant to Rule 4.202, any Commissioner may appeal any decision by the Chair to the Board as a whole, and in such case, a majority vote of the full Board present shall decide such appeal.

Thus, if a Decorum or Civility issue arises, procedurally, the Chair has the authority to both maintain order and enforce actual rules, which are discussed below.<sup>3</sup> In undertaking such action, if any parliamentary issues arise (such as order or priority of debate), the Vice-Chair, with the assistance of the County Attorney as needed, shall advise the Chair. Because the duty and authority to maintain order are vested in the Chair, the County Attorney provides legal guidance, as requested, but defers to the decisions of the Chair, unless such decision is plainly unlawful. The County Attorney is in the position of providing legal advice to the entire Board, and the Board had delegated power to the Chair, which can be overruled by majority vote of the Board. The County Attorney is providing legal advice, not making decisions on when or how to maintain order.

Substantively, four rules included in Part 4 of Chapter 4 provide the rules of Decorum and Civility.<sup>4</sup> The first rule, Rule 4.401, clearly emphasizes the Board's strong position that promoting and preserving Decorum and Civility is a necessity. This Rule reiterates the Chair's duty and authority to preserve order and decorum when the Board is in a meeting. Moreover, it also prohibits a commissioner from delaying or interrupting the proceedings or peace of the Board, prohibits a Commissioner from disturbing any other Commissioner while speaking,<sup>5</sup> and prohibits a Commissioner from refusing to obey the orders of the Board or the Chair.

The second rule, Rule 4.402, among other things, states that a Commissioner who is speaking on any matter shall not use unbecoming, abusive, or unparliamentary language, and shall not comment on the personality or character of any other Board Member (or anyone else).

Rule 4.403, the third rule, then identifies the basic, positive expectations of board discussion, including focusing on what's best for the County; maintaining respect for the Board and its members and demonstrating such respect visibly; demonstrating disagreement while not being "disagreeable"; and if reasonably possible, not surprising fellow commissioners or staff.

Following those general principles, the fourth rule, Rule 4.404 returns to more specific prohibitions in furtherance of Decorum and Civility. This Rule addresses disruptions, and has two separate clauses that could result in the removal of a person from a Board meeting. First, any person who disrupts a Board meeting by making personal, impertinent or slanderous remarks or by resorting to boisterous

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<sup>1</sup> The Chair also has various other duties and authority under the Rules that are unrelated to Decorum and Civility and are not addressed in this memo. Those other duties and authority can be found in Rules 1.301, 1.302, and 4.201.

<sup>2</sup> Additionally, in Chapter 1 of the Rules, Rule 1.207 states that the Vice-Chair shall act as parliamentarian for the Board and that parliamentary training is to be provided to the Vice-Chair at their request.

<sup>3</sup> Subject to Appeal, as provided in Rule 4.202, and discussed in more detail on page 4 of this memo.

<sup>4</sup> Two additional rules in Part 4 of Chapter 4 address attendance and absences and designate a certain portion of the auditorium as "Official Use Only."

<sup>5</sup> The only identified exception is in Rule 4.402, where a Question of Order can be raised, even if it causes an interruption.

behavior while the Board is in session may be removed by the Sheriff's Office. Removal may be requested by the Chair in his/her discretion, by consensus of the Board, or by the Sheriff's office if there is perceived to be an immediate threat to any person.

The second clause in Rule 4.404 that could result in the removal of a person from a Board meeting states that no demonstrations of approval or disapproval from the audience shall be permitted. If, after warning by the Chair, such demonstrations are made and result in a disruption of the meeting, the person(s) creating such disruption may be removed from the meeting, or the Chair may recess the meeting until order is restored.

In either of the above scenarios, Rule 4.404 authorizes the Chair to call upon the Sheriff's officers or other security officers who may be present during the meeting to enforce directions given by the Chair for any violation of this Rule.

It is important to note that the first clause of Rule 4.404 applies to "any person" who disrupts a Board meeting. Such broad wording indicates that a County employee or even a Board member can be removed by the Chair or a consensus of the Board upon finding a disruption has occurred due to the employee or Board member making personal, impertinent, or slanderous remarks, or by boisterous behavior. However, if a Board member is removed under this Rule, it is strongly recommended that the Chair call a recess of the meeting until calm and order can be restored and the Board member is able to return to the meeting. No authority has been found that would allow the Chair or the Board to prohibit or prevent a Commissioner from voting on County business; to the contrary, Florida Statute requires Commissioners to vote on matters before the Board, outside of certain specified instances relating to conflict of interest. Thus, while Rule 4.404 would allow any person, including a Commissioner, to be removed for causing a disruption, it is recommended that no further Board action should be undertaken until such Commissioner be allowed to return to the dais.

In the event of a disruption to a Board meeting or an alleged violation of the Rules, if any Commissioner wants to raise a point or order, Rule 4.602 lists various motions that may be appropriate. Recall, however, that both Rule 4.401 and 4.402 prohibit a Commissioner from interrupting another Commissioner who is speaking, with the sole exception in Rule 4.402 that a Commissioner can interrupt another Commissioner who has the floor by rising to a question of order. Even then, the rising Commissioner should limit the interruption to the specific question of order. The Chair shall rule on the question, and may engage the help of the Vice-Chair and the County Attorney, as authorized under Rule 4.202. (The full text of Rule 4.602 is included in the Appendix.)

Two other rules that appear later in Chapter 4 are also related to maintaining Decorum and Civility. First, very similar to the exception in Rule 4.402 described above, Rule 4.703 states that once a Commissioner is recognized to speak, they shall not be interrupted unless they are called to order for violating any rule of the Board, or they fail to maintain proper decorum. If a Commissioner is called to order while speaking, they shall immediately cease speaking until the question of order is determined by the Chair without debate.

Last, Rule 4.705 addresses Decorum by members of the public when addressing the Board. While there are many important points in this rule, it does not address any decorum or civility requirements of the Commissioners. It is included in the Appendix for your reference.

### III. OTHER CONSIDERATIONS

In addition to provisions contained within the Board Rules, other laws may apply to a Commissioner's activities while on duty or while in a County building or utilizing County resources. While a few such laws are highlighted below for reference, all state and federal laws and regulations regarding elections and political activity is beyond the scope of this memo. Commissioners should familiarize themselves with all applicable laws and regulations.

#### A. The Little Hatch Act

One law of particular importance is Section 104.31, Florida Statutes, often referred to as Florida's "Little Hatch Act."<sup>6</sup> This law prohibits any County officer or employee from using his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof. It also prohibits a County employee from participating in any political campaign for an elective office while on duty. Violation of this law is a first degree misdemeanor. Certainly, all Commissioners are free to make political speech when not on official duty, but there should be no question that a Commissioner in a Board meeting is on duty.

#### B. Ethics and Misuse of Public Position

All actions as a County Commissioner are governed by the Code of Ethics for Public Officers and Employees, adopted by the Florida Legislature as Part III of Chapter 112, Florida Statutes. Section 112.313(6) is of particular importance, and states:

MISUSE OF PUBLIC POSITION. -- No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

The Commission on Ethics has the authority to review and investigate complaints concerning possible violations of the State's ethics laws by state and local elected or appointed public officers and public employees and others as designated by Florida law. Ethical breaches require specific findings of fact<sup>7</sup> and have a range of potential penalties.<sup>8</sup>

#### C. Other Political Campaigning and Contribution Restrictions

Three other provisions are important to be aware of. First, Section 106.15(3), Florida Statutes, prohibits candidates from using the services of any government officer or employee during working hours in furtherance of his/her candidacy. Second, Section 106.15(4), Florida Statutes, prohibits any person from soliciting or knowingly accepting any political contribution in a government-owned building. Similar

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<sup>6</sup> This informal name is based on its similarity to the federal Hatch Act, which prohibits Federal employees from using their official authority or influence to interfere with or affect an election. See 5 U.S.C. § 7323.

<sup>7</sup> For a misuse of public position violation, a public official's actions would have to be inconsistent with the proper performance of public duties where the commissioner acted with wrongful intent, meaning that the commissioner acted with reasonable notice that their conduct was inconsistent with the proper performance of their public duties and would be a violation of the law or the Code of Ethics. See *Blackburn v. State, Comm'n on Ethics*, 589 So. 2d 431 (Fla. 1st DCA 1991).

<sup>8</sup> Penalties range from impeachment, removal from office, suspension from office, public reprimand, forfeiture of salary, civil fines, and restitution.

to the Little Hatch Act, violation of either of these prohibitions is a first degree misdemeanor. Finally, the County's Administrative Code, Section 116.5.8, prohibits the use of the Government Access Channel (GTV) to endorse an issue, candidate, specific person, company or brand name product for consumer use.

#### **IV. CONCLUSION**

The Board Rules allow the Commissioners, County staff, and members of the public to conduct business efficiently and fairly. It is a best practice to be respectful of one another, even when there are disagreements. Maintaining Decorum and Civility helps debate and discussion to focus on the agenda items and not any individual differences of the Commissioners, staff, or the public. Board member should always comply with all Board Rules. If Decorum and Civility are not maintained, the Board Rules referenced herein may be used to reestablish order and allow Board business to be conducted as efficiently as possible.

## APPENDIX

### FULL TEXT OF BOARD RULES REFERENCED IN THIS MEMO

#### **RULE 1.207 VICE-CHAIR**

The Vice-Chair shall assist the Chair in the expeditious conduct of the Board's business during meetings. The Vice-Chair shall act as parliamentarian for the Board. Parliamentary training to be provided at the request of the Vice-Chair.

#### **RULE 1.301 DUTIES OF THE CHAIR**

As the presiding officer of the Board, the Chair shall:

- A. Take the Chair at every meeting precisely at the time for the meeting to begin, immediately call the Board to order, call the roll on the appearance of a quorum, and proceed to the business of the Board.
- B. Sign all ordinances enacted and resolutions adopted by the Board.
- C. Appoint all committees of the Board, and designate the Chair and Vice-Chair thereof, unless otherwise ordered by the Board.
- D. Authorize the placing of items on the Regular Agenda, and order the removal of items from the Consent Agenda.
- E. Exercise the powers granted by these Rules and Policies to the Chair or to the presiding officer.
- F. Present or designate another Commissioner to present all awards, resolutions and honors presented on behalf of the Board.
- G. Approve travel expenditures for all Commissioners, except the Chair. The Vice-Chair or County Administrator shall approve the travel expenses of the Chair.
- H. Perform such other duties as the Board may direct.

#### **RULE 1.302 GENERAL AUTHORITY OF CHAIR**

In addition to his/her duties and powers as the presiding officer of the Board, the Chair shall be responsible for the proper execution of these Rules and Policies, the orders of the Board and the ordinances of the County pertaining to the Board. The Chair, through the County Administrator, shall have general control of the Board chamber and committee rooms assigned to the use of the Board.

## **CHAPTER 4 PROCEDURES**

### **PART 2 PRESIDING OFFICER**

The Chair shall serve as the Presiding Officer unless unable to serve.

#### **RULE 4.201 DUTIES OF PRESIDING OFFICER**

The duties of the presiding officer shall include the following:

- A. State every question before the Board.
- B. Record the vote on all matters concerning which the recording of the ayes and nays is required or requested.
- C. Announce the results of every vote.
- D. Announce the order of business and insure the orderly disposition of the items on the agenda.
- E. Maintain order and enforce the rules of decorum and discipline.
- F. Sign each written measure passed by the Board during the meeting at which he/she is presiding officer.
- G. Execute the orders of the Board made during the time he/she is presiding officer.

#### **RULE 4.202 RULINGS BY THE CHAIR, APPEALS**

The Vice-Chair shall serve as the County Official who shall advise the Chair on parliamentary issues and shall rule on all questions of order and priority of debate, although he/she may ask the advice of the County Attorney. Any Commissioner may appeal the decision of the Chair in which event a majority vote of the Board present shall conclusively determine the ruling appealed. No other business, except a motion to adjourn or to lay on the table, shall be in order until the question on appeal has been decided.

### **PART 4 RULES OF DECORUM AND CIVILITY**

#### **RULE 4.401 BOARD TO PROMOTE AND PRESERVE DECORUM AND CIVILITY**

The Board expressly recognizes that promoting and preserving decorum and civility best enables the Board to fairly and expeditiously conduct the business of the County. While the Board is in session, the Chair shall preserve order and decorum. A Commissioner shall neither by conversation nor otherwise delay or interrupt the proceedings or the peace of the Board, nor disturb any Commissioner while speaking or refuse to obey the orders of the Board or its Chair.

#### **RULE 4.402 MANNER OF SPEAKING**

No Commissioner shall speak on any question or discuss any matter, nor interrupt another, nor make a motion without first being recognized by the Chair. When two or



more Commissioners seek recognition by the Chair, the Chair shall name the Commissioner who is to speak first. No Commissioner shall be interrupted by another without the consent of the Commissioner who has the floor, except by rising to a question of order. A Commissioner, in speaking on any matter, shall confine him/herself to the question, or matter before the Board, shall not use unbecoming abusive or unparliamentary language and shall avoid commenting on personalities or character of other Board members, former Board members, other officials, staff, or the public.

**RULE 4.403 POSITIVE EXPECTATIONS OF BOARD DISCOURSE**

- A. Always focus on what's best for the County, and represent the entire County as well as your individual district.
- B. Maintain respect for the Board and its members. Visibly demonstrate respect for, and fairly represent, each other.
- C. Demonstrate that it is fine to disagree but not to be disagreeable.
- D. If reasonably possible, avoid surprising your fellow commissioners or staff; except positive surprises.

**RULE 4.404 DISRUPTION OF MEETING**

Any person disrupting a Board meeting by making personal, impertinent or slanderous remarks or by boisterous behavior while the Board is in session, may be removed from the meeting by the Sheriff's office. Such removal may be requested by the Chair in his/her discretion, or by consensus of the Board, or by the Sheriff's office if there is perceived to be an immediate threat to any person. No demonstrations of approval or disapproval from the audience shall be permitted; and if, after warning by the Chair, such demonstrations are made and result in a disruption of the meeting, the person(s) creating such disruption may be removed from the meeting; or the Chair may recess the meeting until order is restored. The Chair shall call upon the Sheriff's officers or other security officer who may be present during the meeting to enforce directions given by the Chair for any violation of this Rule.

**RULE 4.602 MOTIONS REQUIRING NO SECOND**

The following motions shall be decided or acted upon without requiring a second:

- A. Call for the division of a question.
- B. Motion to receive committee and agency recommendations.
- C. Fill a blank.
- D. Inquires of any kind.
- E. Leave to withdraw a motion.
- F. Object to the consideration of a question.

G. Parliamentary inquiry.

H. Point of information.

I. Point of order.

J. Question of privilege.

**RULE 4.703 INTERRUPTION OF SPEAKERS**

A Commissioner or official, once recognized, shall not be interrupted while speaking unless calling the Commissioner or speaker to order for transgressing any rule of the Board or failing to maintain proper decorum. Any Commissioner called to order while speaking shall cease speaking until the question of order is determined by the Chair without debate, and if in order, may proceed.

**RULE 4.705 DECORUM**

A. Manner of Addressing the Board. Members of the public and designated representatives shall address their comments to the Board as a whole and not to any Commissioner individually or any group of Commissioners. Imposing a demand for an immediate response from the Board or any member thereof during public comment shall be considered out of order. Persons shall not address the Board with personal, impertinent or slanderous remarks, or become boisterous. A Commissioner shall not engage in dialogue with persons making public comment unless the question or comment is directed through the Chair or made with the permission of the Chair.