

1 P R O C E E D I N G S

2 CHAIRMAN FAY: Next, we will take up Item No.
3 2, and we'll give everyone a chance to grab their
4 seats before we move on to that item.

5 Ms. Harper, you are recognized.

6 MS. HARPER: Thank you. Good morning. I'm
7 Adria Harper with Office of General Counsel. I'm
8 here today with Item 2. Item 2 addresses whether
9 the Commission should repeal a number of obsolete
10 rules, including rules 2525.001 through 2525.030,
11 which we refer to as the Commission's purchasing
12 rules. Rules 25-22.02 and Rules 25-22.100, .101,
13 .1035, .104, .105 and .107, which largely address
14 the Commission clerk's internal filing procedures,
15 as well as rule 25-22.033, the staff communications
16 rule. The joint administrative procedure
17 committee, aka JAPC, staff recently reviewed these
18 rules and submitted letters to the Commission
19 questioning the authority, necessity and form of
20 these rules. Staff is, therefore, recommending the
21 repeal of all of these rules. Staff would like to
22 note that with regard to Rule 25-22.033, the
23 communication rule, OPC raised a concern about the
24 effects of the appearance of repealing the rule
25 with respect to subsection five of that rule,

1 specifically. Staff had discussions with OPC that
2 resolved OPC's concerns. OPC wishes to address the
3 Commission about this resolution and staff is also
4 available for questions. Thank you.

5 CHAIRMAN FAY: Great. Thank you, Ms. Harper.
6 If we could, I'll recognize Office of Public
7 Council to address the Commission on this item.

8 Mr. Rehwinkel, you're recognized.

9 MR. REHWINKEL: Thank you, Mr. Chairman, and
10 thank you to your staff. Commissioners, this rule
11 repeal I concur that staff's on solid legal ground
12 for taking the action that they are. When I saw
13 the repeal proposal for 2522-033(5), it was like
14 traveling back in time. I was at the Commission in
15 1993 when this particular rule was adopted, adopted
16 at a time of a lot of misery at the Commission, and
17 is no reflection on the current Commission. But it
18 was adopted for a really good reason, because there
19 were problems. And the concern that I had that I
20 raised with your general counsel was that if this
21 rule is repealed, and it's the sentence that says,
22 no commit -- no commission employee shall directly
23 or indirectly relay to a Commissioner any
24 communication from a party or an interested person
25 which would otherwise be a prohibited ex parte

1 communication, under section 330.42 Florida
2 Statutes.

3 That was the -- that rule was adopted because
4 there had been documented instances where that
5 provision was violated through communication with
6 the staff that were intended to end up with the
7 Commission. Our concern was that if this repeal
8 came, it would create the appearance that your
9 long-standing practice over the last 30 years of
10 following that would be viewed as being no longer
11 in place. So I relayed this concern to Mr.
12 Hetrick, and he assured me that this provision in
13 here, given the JAPC's position, would be addressed
14 with an administrative procedure manual proposal.
15 And, if that's the case, the Public Counsel feels
16 confident that no one should make an erroneous
17 judgment that the repeal of this rule means that
18 there has been a change in the practice at the
19 Commission that encourages people to do what this
20 tenet says you couldn't do. Regardless of JAPC's
21 position about the authority of this rule, it's
22 been on the books and it's been subject to
23 enforcement over a long period of time.

24 I'm not opining about whether enforcement
25 would have been successful, but I think this rule

1 has been a strong disincentive for people to
2 violate the intent of this sentence. Taking this
3 sentence and putting it in your administrative
4 procedures that apply to your staff will, in my
5 view, and the Public Counsel's view, I think the
6 public's view continue practice that you have
7 followed all this time, and it will -- it will
8 position the stricture on the staff and not there
9 instead of in the statute when JAPC said --
10 (technical interruption) -- so that's what I wanted
11 to bring up, and I really appreciate the fact that
12 when I raised this with Mr. Hetrick, he asked staff
13 to do some research. They got their -- put their
14 heads together and they came up with a solution
15 they proposed to me and the Public Counsel's Office
16 and we are in -- we support it.

17 CHAIRMAN FAY: Great. Thank you. And I do
18 appreciate those comments. I think that staff has
19 worked hard on these rules. And I -- you know,
20 there's a number of them on here. You spoke to
21 one, Mr. Rehwinkel, but these aren't always the
22 most exciting things to work on, repealing rules
23 that maybe the authority isn't clearly expressed in
24 the statute, but I think it's incumbent on us to
25 make sure that any operations that we're doing with

1 implementation of rules are clearly laid out in the
2 statute, and so I want to say thank you to you, Mr.
3 Hetrick, and your team for getting this cleaned up.
4 I think it's an appropriate correction that we
5 maybe could have made a little bit earlier, but I
6 think all your folks were working hard to get it
7 done with quick turnaround.

8 So, with that, Commissioners on Item 2, I will
9 take a motion.

10 We have a motion and a second to move all
11 issues on Item 2.

12 All those that approve say, aye.

13 None opposed.

14 With that, Item 2 passes.

15 Thank you, Ms. Harper.

16 (Agenda item concluded.)

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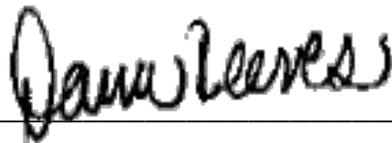
STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional Court
Reporter, do hereby certify that the foregoing
proceeding was heard at the time and place herein
stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED THIS 15th day of August, 2022.



DANA W. REEVES
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