

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: CAROLYN FORD,)
)
 Respondent.) Case No: 99-2411EC
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Carolyn S. Holifield, held a formal hearing in the above-styled case on December 8-9, 1999, in Tallahassee, Florida.

APPEARANCES

For Advocate: James H. Peterson, III, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

For Respondent: Jack L. McLean, Jr., Esquire
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STATEMENT OF THE ISSUES

The issues for determination are: (1) whether Respondent, Carolyn Ford, as a member of the Quincy City Commission, violated Section 112.3135(2)(a), Florida Statutes, by advocating the appointment of her son for a position with the Quincy Police Department; (2) whether Respondent violated Section 112.313(6), Florida Statutes, by using her official position as a member of the Quincy City Commission to attempt to obtain a job for her son

with the Quincy Police Department; and (3) if so, what penalty is appropriate.

PRELIMINARY STATEMENT

On March 12, 1999, the Florida Commission on Ethics (Ethics Commission) issued an Order Finding Probable Cause to believe that Respondent, Carolyn Ford, as a member of the Quincy City Commission, violated Section 112.3135(2)(a), Florida Statutes, by advocating the appointment of her son to a position in the Quincy Police Department. Additionally, the Ethics Commission found that there was probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by using her official position to attempt to obtain a job for her son with the Quincy Police Department. On or about May 27, 1999, the case was forwarded to the Division of Administrative Hearings for assignment to an administrative law judge to conduct a public hearing and prepare a recommended order.

Prior to the final hearing, the parties submitted a Joint Prehearing Stipulation containing a number of stipulations of fact and law. The facts to which the parties stipulated required no proof at hearing.

At the final hearing, Advocate called four witnesses: Celese Whiddon, Robert Barkley, Dr. Harold Henderson, and Chief Rodney Moore. Advocate also offered three exhibits that were received into evidence and proffered one exhibit, Advocate's Exhibit AE-4. Upon consideration of Exhibit AE-4, Section

90.610(1), Florida Statutes, and Raydo v. State, 696 So. 2d 1225 (Fla. 1st DCA 1997), approved in part and quashed in part, 713 So. 2d 996 (Fla. 1998), Advocate's Exhibit AE-4 is also received into evidence and considered in this proceeding. Also, at Advocate's request, official recognition was taken of the City of Quincy Career Service Rules. Respondent testified on her own behalf and called 11 witnesses: Glendell Russ, Celese Whiddon, Auburn Ford, Jr., Anthony Powell, Kenneth Cowen, James Corder, Keith Dowdell, Robert Barkley, Joe Brinson, Adrienne Allen, and Mary Corder. Respondent offered five exhibits that were received into evidence.

A Transcript of the proceeding was filed with the Division of Administrative Hearings on December 28, 1999. By agreement of the parties, the time set for filing proposed recommended orders was January 31, 2000. At Advocate's request, the time for filing proposed recommended orders was extended to February 14, 2000. Both parties timely filed Proposed Findings of Fact and Conclusions of Law under the extended time frame.

FINDINGS OF FACT

1. Respondent, Carolyn Ford (Respondent), currently serves as a city commissioner for the City of Quincy, Florida, having first been elected to that office on March 31, 1998.

2. As a city commissioner, Respondent is subject to the requirements of Part III, Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees.

3. Sections 2.08, 3.01, 3.02, and 9.01 of the Quincy City Charter (Quincy City Charter or Charter) give the Quincy City Commission (City Commission or Commission) the authority to appoint and remove the city manager, the city attorney, and the city clerk.

4. Under Section 3.04 of the Quincy City Charter, the city manager is given the exclusive authority to employ or appoint certain employees and administrative officers for the City of Quincy, including the police chief. Moreover, such employees or administrative officers serve at the pleasure of the city manager, who may, "when he deems necessary for the good of the services . . . suspend in writing, with or without pay, or remove any employee under his jurisdiction"

5. Section 204(b) of the Quincy City Charter expressly prohibits the Commission or its members from dictating the appointment or removal of any city employee or administrative officer whom the city manager or any of his subordinates are empowered to appoint. Nonetheless, that provision of the Charter permits city commissioners, while in open or executive session, to "express their views and fully and freely discuss with the city manager anything pertaining to the appointment and removal of such officers and employees." By expressing their views to the city manager regarding the appointment or removal of city officials and employees, city commissioners may influence the hiring and firing of such officials or employees.

6. Shortly before or after the March 1998 election, Roger Griswald, police chief for the City of Quincy, submitted his letter of resignation to City Manager Kenneth Cowen. Thereafter, City Manager Cowen appointed Robert Barkley (Barkley), who had served as Griswald's assistant for four years, as interim police chief. Barkley served in this position for about a month.

7. Sometime during the week of May 17, 1998, City Manager Cowen called Barkley and asked whether he would accept the appointment as permanent police chief.

8. On May 20, 1998, after City Manager Cowen talked to Barkley about being appointed permanent police chief, Barkley telephoned then Quincy City Commissioner Glenn Russ (Commissioner Russ or Russ). At Barkley's request, Commissioner Russ went to the Quincy Police Department (police department) to meet with Barkley. During the course of the meeting, it became apparent that Barkley had called the meeting in order to seek and gain Commissioner Russ' support of Barkley's appointment as permanent police chief for the police department.

9. Prior to Barkley's calling Commissioner Russ, he was well aware that Commissioner Russ was dissatisfied with the police department because Russ had publicly expressed his views.

10. Since 1995, Russ had been an outspoken critic of the police department, including Barkley. Russ' criticism stemmed from the police department's refusal to launch an independent investigation of a 1995 fatal car accident that involved a Quincy

police officer and resulted in the death of two or three people, one of whom was Russ' cousin.

11. During the May 20, 1998, meeting, Barkley disclosed to Commissioner Russ that City Manager Cowen wanted to appoint Barkley as permanent police chief. Barkley then told Commissioner Russ that he wanted to "bury the hatchet" and have Russ work with him. However, Commissioner Russ rejected both offers and was adamant that under no circumstances was he willing to "bury the hatchet."

12. At some point during the May 20, 1998, meeting between Barkley and Russ, Auburn Ford, Jr. (Ford), the adult son of Respondent, stopped by the police department after he saw his friend Russ' car parked there. Barkley invited Ford to come into his office. Once Ford was in the office, Barkley asked him what it would take for "us to get along," to which Ford replied, "Nothing." Barkley then told Ford that City Manager Cowen was going to name Barkley police chief, and that there could be a "second-in-command" job for Ford. This idea was nixed by Ford who stated emphatically that he wanted to be police chief. Barkley then suggested that he should be police chief because he had more experience in law enforcement than Ford. However, Ford's position remained unchanged and he insisted that he wanted to be police chief, not second-in-command to Barkley.

13. Barkley later called Anthony Powell to the May 20, 1998, meeting with Commissioner Russ and Ford. Barkley hoped to

persuade Powell to support his appointment as the permanent police chief. Powell's support was important because he was considered by many in the community to be the frontrunner for the Quincy city manager position after City Manager Cowen was removed from office.

14. Once Powell arrived at the May 20, 1998, meeting, in an effort to put their past disputes behind them, Barkley expressed his desire to "bury the hatchet." In response, Powell stated only that Russ was his friend and that he did not want to get in the middle of any conflict between Russ and Barkley. Further, Powell stated that he only wanted to be a good employee.

15. Some time ago, when both Barkley and Powell were city employees, Barkley was Powell's supervisor. The relationship between Barkley and Powell became strained after, based on Barkley's recommendation, Powell was reprimanded and suspended for a week without pay.

16. The May 20, 1998, meeting initiated by Barkley and held in his office, failed to gain for him the support he wanted. Neither Russ, Powell, nor Ford responded positively to Barkley's overtures. Russ told Barkley, "it was war" between them and he would not "bury the hatchet." Powell, though not as outspoken as Russ, never agreed to support Barkley as police chief. Finally, Ford never agreed to serve as second-in-command but rather insisted that he wanted to be police chief for the City of Quincy.

17. Russ, Ford, and Powell were friends who sometimes socialized together. It was at a social attended by Russ, Ford, and Powell in January 1998 that the idea of Ford's becoming police chief was first discussed. Respondent was not present at this event.

18. On or about May 28, 1998, Cowen advised Barkley that he was going to appoint him police chief and that the appointment would be announced at an official ceremony at City Hall the following day, Friday, May 29, 1998, at 11:00 a.m.

19. Both Cowen and Barkley knew that such an appointment might be short-lived because the City Commission had recently directed the attorney for the city to prepare a resolution for then City Manager Cowen's removal. Nonetheless, Cowen and Barkley were optimistic that Barkley's appointment would not be immediately jeopardized because of their belief that Barkley had community support.

20. On the evening of May 28, 1998, around 9:00 p.m., Barkley was paged by his wife and given Ford's telephone number to call. Ford had called Barkley after learning that Barkley would be appointed police chief the next day. Later that evening, Barkley returned Ford's call. Ford asked Barkley if he was going to accept the position of police chief. In response Barkley indicated that he was going to accept the position. Ford then told Barkley that he should not accept the position because "You know what's going to happen next Tuesday night," referring

to the resolution which would be presented at the City Commission meeting Tuesday night to replace Cowen as city manager.

21. Barkley was not sure what Ford meant by his reference that "something would happen" by next Tuesday. Barkley was unsure whether Ford was threatening to harm Barkley and/or his family or whether Ford was referring to the upcoming City Commission meeting. As a result of his conversation with Ford, Barkley became concerned for his safety and that of his family.

22. After the telephone conversation with Ford, Barkley called his friend, then Quincy Police Officer James Corder and expressed his concern about Ford's call. Officer Corder then contacted Captain Jim Godwin of the Gadsden County Sheriff's Office and reported the incident. Later that night, Barkley told his wife and Dr. Harold Henderson, Superintendent of Gadsden County Public Schools and Barkley's best friend, about the telephone conversation with Ford.

23. At about 8:00 a.m. the next morning, Friday, May 29, 1998, Ford was told that Barkley had made a report to the Gadsden County Sheriff's Office, alleging that Ford had threatened him. In an effort to clear up Barkley's misperception of Ford's comments, Ford immediately called Dr. Henderson and explained that he had not threatened Barkley. Ford then asked Dr. Henderson to talk to Barkley about the situation and convey that the comments were not a threat. Dr. Henderson called

Barkley that same morning but was unable to convince him that Ford was not a threat.

24. Later that morning, at about 11:00 a.m., the scheduled ceremony was held at Quincy City Hall for Barkley's swearing in as police chief. This event, attended by a number of community leaders as well as Barkley's family and friends, was planned to gather support for Barkley to remain in the police chief position after the new city manager was appointed. It was anticipated that the new city manager would be appointed within two weeks.

25. At the conclusion of the ceremony, Ford went to Barkley in a non-threatening manner, congratulated Barkley and indicated that he wanted to work with him. Ford also told Barkley that they needed to talk and settle the matter. Thereafter, a brief verbal confrontation ensued between Ford and Officer Corder, who was near Barkley. At that time, there were a number of officers around Barkley who knew about the alleged threat and, consequently, were on heightened alert. As Ford approached Barkley, some of the officers moved toward Ford in a threatening manner. Thereafter, in an effort to prevent the situation from escalating, a police officer escorted Ford from the building.

26. After Ford was escorted from City Hall, he called his mother, Respondent, and told her about the alleged threat and the confrontation with the police officers after the swearing-in ceremony. In describing the incident to Respondent, Ford stated

that the police officers had "encircled him and . . . had their hands on their guns."

27. After the conversation with Ford, Respondent became concerned for her son's safety. She believed that the situation involving her son's alleged threat was simply a misunderstanding and one that needed to be resolved immediately to prevent the matter from becoming a more serious problem.

28. In an effort to quell any criminal repercussions against her son which could have resulted from Barkley's allegation and out of concern for his safety, Respondent requested the assistance of Dr. Henderson to help to resolve the misunderstanding between Barkley and her son. On May 29, 1998, after learning about Ford's alleged threat and the encounter with the police officers, Respondent called Dr. Henderson. Respondent explained the situation regarding the alleged threat and requested that Dr. Henderson meet with her and Barkley in order to resolve the misunderstanding. Because Dr. Henderson considered both Respondent and Barkley friends, he agreed to arrange and facilitate such a meeting.

29. When Respondent arrived at Dr. Henderson's office the afternoon of May 29, 1998, she asked that Dr. Henderson "show some leadership" and help resolve the situation between her son, Ford, and Barkley. During the first part of the meeting, when only Respondent and Dr. Henderson were present, the focus of the meeting was the alleged threat. Respondent and Dr. Henderson

discussed the alleged threat and agreed that the matter was getting "out-of-hand" and had escalated to the point where something had to be done. Further, Respondent indicated that she did not believe her son would make such a threat and that the whole incident was a misunderstanding.

30. Dr. Henderson knew Ford and concurred with Respondent's opinion that Ford would not make such a threat. However, Dr. Henderson had been unable to convince Barkley of this in their previous two telephone conversations regarding the matter.

31. At some point during the May 29, 1998, meeting, Dr. Henderson called Barkley and Respondent called Ford to join the meeting.

32. Barkley arrived at the meeting before Ford. When Barkley arrived, Respondent discussed her concerns relative to the alleged threat. Respondent's comments to Barkley focused on the alleged threat. In fact, she said the same things to Barkley that she had said earlier to Dr. Henderson. That is, she did not believe Auburn Ford would make such a threat, the incident was simply a misunderstanding, and the matter needed to be resolved. This part of the conversation lasted about 15 or 20 minutes and concluded after Barkley explained that it was just a misunderstanding and that the matter had been "taken care of."

33. Following the exchange regarding the alleged threat, with only Respondent, Barkley, and Dr. Henderson present, there was a discussion of problems with the police department.

Respondent indicated her general dissatisfaction with the police department and her belief that the police department was "out of control." Respondent stated that she thought her son could be a "liaison" between the police and the Commission to help bridge the gap and solve some the department's "perception problems." However, in making these very general comments, Respondent never mentioned Ford's getting a job with the police department.

34. After the aforementioned discussion, Ford arrived at the meeting in Dr. Henderson's office. Once Ford arrived, Respondent wanted Barkley and Ford to discuss and resolve the issue relative to the alleged threat. With Dr. Henderson serving as facilitator, Barkley and Ford discussed the alleged threat. Ford explained that Barkley had simply misinterpreted his comment.

35. Once the issue of the alleged threat was resolved, the discussion between Barkley and Ford shifted to the possibility of Ford's working for Barkley within the police department. Prior to the May 29, 1998, meeting, Dr. Henderson was aware that Ford wanted to be police chief and, as facilitator, thought this matter was one that could be worked out amicably between Barkley and Ford. To this end, as part of this meeting, Barkley and Ford, with Dr. Henderson as facilitator, discussed Ford's working in the police department under Barkley.

36. At some point during the discussion concerning the possibility of Ford's working for the police department, Ford

stated that he had the support of the city commissioners. Because the City Commission had five members, Ford's statement implied that he had the support of three of the commissioners. Respondent was not involved in this part of this discussion and there is no indication that Respondent heard the comment.

37. Respondent was in Dr. Henderson's office during the meeting between Barkley, Ford, and Henderson but was on the other side of the very large office looking at a television program. Respondent believed that the misunderstanding could be resolved if Dr. Henderson facilitated a discussion between Barkley and Ford. Therefore, Respondent did not participate nor was she involved in the discussions between Barkley and Ford, including the discussion about Barkley's bringing Ford on board to work with the police department.

38. The meeting at Dr. Henderson's office ended after Agent Brinson of the Florida Department of Law Enforcement came by Dr. Henderson's office to interview Barkley and Ford about the alleged threat.

39. When the meeting concluded, both Ford and Dr. Henderson had the impression that Barkley was going to hire or appoint Ford to a position with the police department, and the details would be worked out at a meeting the following Monday at 8:00 a.m.

40. After the May 29, 1998, meeting, Barkley decided not to hire or appoint Ford. On Monday, May 31, 1998, Barkley called Dr. Henderson and indicated that he was not going to hire Ford.

Dr. Henderson then told Barkley that he should call Respondent and tell her. Barkley complied with Dr. Henderson's request and called Respondent. When Barkley reached Respondent, he told her that he could not do "it" and hung up the phone.

41. Four days after Barkley was appointed as permanent police chief of the Police department, City Manager Cowen was replaced by Anthony Powell.

42. As city manager, Powell exercised his independent judgment to hire and retain those employees he felt best reflected his management style and who could best serve the interests of the City of Quincy.

43. On June 9, 1998, a week after Powell was appointed city manager, he decided to replace Barkley. Two days later, Barkley was relieved from his responsibilities as police chief. The reason City Manager Powell decided to remove Barkley as police chief was that he disagreed with Barkley's management style and doubted his credibility.

44. Prior to Barkley's separation from the police department, Respondent urged City Manager Powell to continue Barkley's employment with the city. However, notwithstanding Respondent's support of Barkley, Powell made it clear to Respondent that Barkley could not continue as police chief.

45. On June 11, 1998, City Manager Powell appointed Rodney Moore to replace Barkley as Quincy's police chief.

46. Ford applied for a position with the police department on June 19, 1998, three weeks after the May 29, 1998, meeting in Dr. Henderson's office.

47. More than a month after it was filed, Ford's application had not been processed.

48. On July 20, 1998, at approximately 1:40 p.m., Commissioner Russ telephoned Chief Moore's office. Commissioner Russ was agitated because his car had been vandalized on July 16, 1998, while it was parked in front of City Hall. The police officer called to the scene promised to have a written report prepared by the next day but had not done so. Commissioner Russ complained to Chief Moore that he had not received the incident report regarding the vandalism of his car. He also told Chief Moore that he (Moore) "had problems" because Ford should have been hired. After voicing his complaints, as if to explain his mood, Commissioner Russ told Chief Moore that he (Russ) had lost his job that day and had enough problems. Commissioner Russ ended the conversation by telling Chief Moore that he needed to "straighten it up" and "work it out."

49. Later, on the afternoon of July 20, 1998, Commissioner Russ went to Respondent's office in Gretna as a volunteer to work on her office computers. While at Respondent's office, Commissioner Russ telephoned Chief Moore. Commissioner Russ still sounded very upset and during this conversation, again, complained about the police department's failure to timely

process Ford's application for a reserved officer position with the police department. Commissioner Russ also told Chief Moore that he had problems because Ford had not been hired.

50. Respondent was not in her office when Commissioner Russ was speaking on the telephone, and was unaware of the identity of the person to whom Russ was speaking.

51. During his telephone conversation with Chief Moore, Russ was speaking very loudly and could be heard overheard by those in the area outside Respondent's office. Because Commissioner Russ' conduct was disruptive, Respondent went into her office and told Russ to leave.

52. After Respondent told Russ to leave her office, he told Chief Moore to explain it to "her." Russ then either handed the telephone receiver to Respondent or put it on the desk. Once Respondent had the telephone receiver, Chief Moore continued giving the explanation regarding the reasons for the delay in processing Ford's application. The reason Chief Moore continued the explanation he was giving Russ was that he assumed Respondent was interested in the processing of her son's application.

53. After listening to Chief Moore's explanation, Respondent expressed a concern about the manner in which the application was being processed. Respondent's specific concern appeared to be the length of time it took to process an application. However, Respondent made no attempt during this telephone conversation or any other time to influence Chief

Moore's decision to hire her son. In fact, the credible testimony of Chief Moore was that Respondent "never mentioned anything about hiring him" and that Russ was the only person pushing Ford's employment.

54. At no time during the May 29, 1998, meeting or anytime thereafter did Respondent participate in any discussion about Ford's working with the police department. In fact, although Ford had worked extensively in law enforcement, Respondent was never supportive of her son's desire to work in this area.

55. At no time did Respondent threaten, coerce, or intimidate Barkley or anyone else about hiring her son, Ford, to work for the police department.

56. Ford was never a paid employee of the police department.

CONCLUSIONS OF LAW

57. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

58. Section 112.322, Florida Statutes, and Rule 34-5.0015, Florida Administrative Code, authorize the Commission on Ethics to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes (Code of Ethics for Public Officers and Employees).

59. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in the proceedings. Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting the affirmative that Respondent violated Sections 112.3135(2)(a) and 112.313(6), Florida Statutes. Therefore, the burden of establishing by clear and convincing evidence the elements of Respondent's violations is on the Commission. Lantham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1996), citing Department of Banking and Finance v. Osborne Stern, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

60. As noted by the Supreme Court of Florida:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In Re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

61. It has been alleged that Respondent advocated the appointment of her son for a position with the police department

in violation of Section 112.3135(2)(a), Florida Statutes. That section provides in pertinent part as follows:

A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official.

62. The term "public official" is defined by Section 112.3135(1)(a)6.(c), Florida Statutes, as:

[A]n officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.

63. A "city" is included in the definition of the term "agency" set forth in Section 112.3135(1)(a)5., Florida Statutes.

64. A "son" is included in the definition of "relative" set forth in Section 112.3135(1)(d), Florida Statutes.

65. In order to establish a violation of Section 112.3135(2)(a), Florida Statutes, the following elements must be proved:

1. The Respondent must have been a public official or employee in whom was vested the authority by law, rule or regulation, or to whom the authority had been delegated, to appoint, employ, promote or advance individuals or to recommend

individuals for appointment, employment, promotion or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, promotion or advancement of individuals employed by the Respondent's agency.

2. The Respondent must have appointed, employed, promoted or advanced, or advocated for appointment, employment, promotion or advancement, a relative of the Respondent.
3. Such appointment, employment, promotion or advancement, or advocacy for the relative, must have been for a position in the agency in which the Respondent was serving or over which the Respondent exercised jurisdiction or control.

66. With regard to the first element under Section 112.3135(2)(a), Florida Statutes, it has been established that Respondent, as a Commissioner for the City of Quincy, is a public official within the meaning of this provision. Moreover, the parties have stipulated that Respondent is subject to the requirements of Part III, Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees.

67. As to the second element, Advocate has failed to establish by clear and convincing evidence that Respondent advocated the appointment of her son for a position in the police department.

68. The evidence at hearing established that Respondent did not participate in any discussions with Barkley, Moore, or anyone else about her son's being hired or appointed to a position with the police department. It is undisputed that Respondent met with

Barkley and Dr. Henderson on May 29, 1998. However, the evidence clearly established that the issue Respondent discussed with Barkley involved the alleged threat made by Ford and not Barkley's hiring or appointing Ford to work in the police department.

69. With regard to the May 29, 1998, meeting, the clear and convincing evidence was that the appointment or hiring of Ford was discussed only by Dr. Henderson, Barkley, and Ford and that when that discussion occurred, Respondent was otherwise occupied and did not participate in the discussion. Furthermore, contrary to the assertion that Respondent advocated the appointment of her son for a position with the police department, the clear and convincing evidence established that the suggestion that Ford be appointed to a position with the police department originated with Barkley. The undisputed evidence established that on May 20, 1998, Barkley, unknown to Respondent, met with Ford and offered Ford the second-in-command position with the police department after he learned that Ford wanted to be police chief.

70. It is further alleged that in a telephone conversation with Chief Moore, Respondent advocated the appointment of her son for a position with the police department. The evidence at hearing fails to support this allegation.

71. The clear and convincing evidence established that Respondent never approached Chief Moore about hiring Ford. Rather, the evidence showed that Russ telephoned Moore to

criticize the delay in processing Ford's employment application and during the course of that conversation became upset or angry by Chief Moore's explanation and either handed the phone to Respondent or put it on a desk. The evidence also established that after Respondent was handed the phone or picked it up from the desk, Chief Moore continued the explanation that he had been giving Russ regarding Ford's employment application. Moreover, the clear and convincing testimony was that after listening to Chief Moore's comments, Respondent was concerned about the application processing procedures and was not advocating a position for her son. The credible testimony of Chief Moore was that Respondent "never mentioned anything about hiring [Ford]."

72. In light of the foregoing conclusions, that Respondent never advocated the appointment or employment of her son for a position with the police department, it is unnecessary to consider the third element noted in paragraph 65 above and required to prove a violation of Section 112.3135(2)(a), Florida Statutes.

73. It is also alleged that Respondent violated Section 112.313(6), Florida Statutes, by using her position as a city commissioner to secure a special benefit, a job, for her son. That section provides in pertinent part:

MISUSE OF PUBLIC POSITION. - No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or

her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

74. The term "corruptly" is defined by Section 112.312(9), Florida Statutes, as follows:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

75. In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements be proved:

1. The Respondent must have been a public officer or employee.
2. The Respondent must have:
 - a) used or attempted to use her official position or any property or resources within her trust, or
 - b) performed her official duties.
3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for herself or others.
4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting herself or another person from some act or omission which was inconsistent with the proper performance of her public duties.

76. The first element (that Respondent is a "public officer") required to show a violation of Section 112.313(6), Florida Statutes, has been met. The term "public officer," as defined in Section 112.313(1), Florida Statutes, "includes any person elected or appointed to hold office in any agency,

including any person serving on an advisory body." Therefore, Respondent is a public officer by virtue of the fact that she was elected as a city commissioner for the City of Quincy, Florida, in March 1998 and currently serves in that capacity.

77. Based on the foregoing conclusions, the second and third elements necessary to prove a violation of Section 112.313(6), Florida Statutes, have not been established. Accordingly, it is unnecessary to address the fourth element noted in paragraph 75 above.

78. The evidence adduced at hearing failed to establish that Respondent, as a city commissioner, advocated the appointment of the her son for a position with the police department or used her official position to attempt to obtain a job for her son with the police department.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that a final order and public report be entered finding that Respondent Carolyn Ford, did not violate Sections 112.3135(2)(a) and 112.313(6), Florida Statutes.

DONE AND ENTERED this 17th day of April, 2000, in
Tallahassee, Leon County, Florida.

CAROLYN S. HOLIFIELD
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of April, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.