



II. Whether Respondent violated Section 112.313(6), Florida Statutes, by directing Public Defender's Office employees, during public working hours and using public resources, to prepare and deliver materials for courses that Respondent was teaching;

III. Whether Respondent violated Section 112.313(6), Florida Statutes, by directing a Public Defender's Office employee to take Respondent's personal automobile in for repairs during public work hours;

IV. Whether Respondent violated Section 112.313(6), Florida Statutes, by directing a Public Defender's Office employee to make personal bank deposits for Respondent and her mother during public work hours; and

V. Whether Respondent violated Section 112.313(6), Florida Statutes, by directing Public Defender Office employees to type personal letters for Respondent during public work hours.

#### PRELIMINARY STATEMENT

On July 30, 2002, the Florida Commission on Ethics issued an order finding probable cause to believe that Respondent, Julianne Holt, while serving as the Public Defender for the Thirteenth Judicial Circuit, violated Section 112.313(6), Florida Statutes, as outlined under the Statement of Issues, above. The case was forwarded to the Division of Administrative

Hearings for assignment of an Administrative Law Judge on or about January 13, 2003.

Prior to the final hearing, the parties submitted a Joint Prehearing Stipulation containing a number of stipulations of fact and law. References to these stipulations will be as "Stip-" followed by the appropriate paragraph number as set forth under the admitted facts section of the Joint Prehearing Stipulation.

At the final hearing, the Advocate called six witnesses: Sharon Slater, Melissa Dearing, Wanda Moore, Christine Sleater, Vicky Butts and Respondent. The Advocate also called Nicole Hanscom for her testimony regarding school work Ms. Hanscom had allegedly performed for Respondent after the finding of probable cause in this case, but objections to questions regarding that work were sustained on the grounds of relevance.

The Advocate offered 16 pre-marked exhibits, numbers 1 through 9, all of which were composites. Of those, the following were received into evidence: Advocate's Exhibit 1L; Advocate's Exhibits 2A through 2BB; Advocate's Exhibits 3A, 3B, 3F and 3G; Advocate's Exhibit 5, consisting of an electronic disk ("Sharon Slater's" Disk #1), a file list of documents found on that disk, and selected printed hard copies with alphabetical file name identifiers in the lower right hand corner of each beginning with ELLER.MID through USAIR.LET, all of which were

received with the exception of one identified as ETHICADD.WPD, which was not received; Advocate's Exhibit 6, consisting of an electronic disk ("Sharon Slater's" Disk No. 2), a file list of documents found on that disk, and selected printed hard copies with alphabetical file name identifiers in the lower right hand corner of each beginning with EVERIDGE.LET through WOOD.LET, all of which were received with the exception of those identified as INVENTOR.WPD and LANE.LET, which were not received; Advocate's Exhibit 7, consisting of an electronic disk, a file list of documents found on that disk, and selected printed hard copies with alphabetical file name identifiers in the lower right hand corner of each beginning with ADVERTIS.LIS and ending with YARD.SIG,<sup>1/</sup> all of which were received,<sup>2/</sup> with the exception of one identified as STORE.SIG, which was not received; Advocate's Exhibits 8B through 8N,<sup>3/</sup> with the exception of 8F, which was not moved; Advocate's Exhibits 9A through 9II, with the exception of 9P, 9Q and 9Z, which were not received; and Advocate's Exhibits 10, 12,<sup>4/</sup> 13, & 14. The Advocate also offered Exhibits 17 and 19, which were received into evidence.<sup>5/</sup> All of the Advocate's Exhibits that were received retained their original exhibit designations. Although Advocate's Exhibits 9JJ and 9KK were not received, they were proffered on the record. Reference to Advocates's Exhibits will be made as "A-" followed by the appropriate exhibit number and letter or file name designation.

Respondent testified on her own behalf and called 14 witnesses: Jeanine Cohen, Samantha Ward, Lynn Perez, Marco LaMonte, Walter Elly, Doug Roberts, Nichole Hanscom, former Judge Frank Dennis Alvarez, Yolanda Olivo, Judge Gregory Paul Holder, Wanda Campbell, Jorge Lorenzo, Judge Manuel Lopez, and Judge Raymond O. Gross.<sup>6/</sup>

Respondent offered 52 exhibits, all of which, with the exception of Respondent's Exhibits 13, 14 and 23, were received into evidence as marked by the Respondent. The Administrative Law Judge reserved ruling on Respondent's Exhibit 23. Although Respondent's Exhibit 23 was eventually rejected at hearing, it was proffered on the record. References to Respondent's exhibits received into evidence will be made as "R-" followed by the corresponding exhibit letter.

A transcript of the hearing was ordered by Respondent. References to the Transcript will be made as "T-" followed by the appropriate page number, with the witness identified in brackets. References to Judge Gross's deposition testimony will be made by "T2-" with the page number.

The parties submitted proposed recommended orders which have been read and considered in preparing this recommended order. All citations are to Florida Statutes (2002) unless otherwise indicated.

## FINDINGS OF FACT

### THE RESPONDENT

1. Respondent currently serves as the Public Defender for the Thirteenth Judicial Circuit in Tampa, Florida, and has served in that capacity since taking office after her election in 1992.

2. Respondent is subject to the requirements of Part III, Chapter 112, the Code of Ethics for public officers and employees, by virtue of the fact that Respondent serves as Public Defender.

3. Respondent is a public official within the meaning of Part III, Chapter 112, Florida Statutes, by virtue of Respondent's position as Public Defender, and is subject to the provisions of Section 112.313(6).

4. The Thirteenth Judicial Circuit Public Defender Employee Manual, revised February 1, 1996, sets forth the Public Defender Office's policies and standards applicable during the 1996 campaign.

### BACKGROUND OF COMPLAINT TO ETHICS COMMISSION

5. This complaint arose from allegations made by Scott Moore and others, including members of Scott Moore's family to the newspapers, the Florida Department of Law Enforcement and the Ethics Commission.<sup>7/</sup>

6. Joe Moore, the patriarch of the family, was an old and close friend of the Respondent. Their relationship was described as being as close as brother and sister, and this closeness extended to Joe's children: Scott, Mike and Melissa Moore Dearing. In addition, Scott Moore married Wanda Granado, who was secretary to the Respondent during a portion of time covered by these charges.

7. The Moore family assisted the Respondent at home and at the office in a familial manner, painting, running errands, and looking after one another. This was mutual, and the Respondent tendered regular employment to three members of the family, and part-time employment to Melissa when she was home on Christmas and summer breaks from school.

8. Scott Moore was employed by Respondent in various capacities. Scott Moore was, like all of the employees of the office, an at-will employee serving at the pleasure of the Respondent.

9. There had been a history of problems with Scott Moore arising from his failure to accept supervision from the management staff of Respondent's office. Scott Moore consistently went to his father, Joe Moore, who in turn went to the Respondent in an effort to circumvent supervision. This resulted in staff dissention to the extent that the Respondent

found it necessary to have a meeting with the Moores and their supervisors to address this issue in 1999.

10. At this meeting, the Respondent told the assembled Moores that, notwithstanding their personal friendship, they were subject to the direction of their supervisors at work. This was sufficiently disturbing to Scott Moore that he stood up with such force at the meeting, that his chair rolled back into the wall and knocked two pictures off the wall. He resigned, and walked out of the meeting.

11. His belongings were packed up by a secretary, but Scott Moore returned, apologized to the Respondent, and asked to come back to work. The Respondent permitted him to do so. Scott Moore worked for the Public Defender's office until May 4, 2000, at which time he was the network administrator for the computer system of the Public Defender's office.

12. After an investigation of an incident in which a document was copied from a file, printed out, and left anonymously in an employee's office, it was determined that Scott Moore had improperly accessed the files of other employees and inappropriately copied multiple materials from their files. When confronted with the materials he had copied from files in the office, he refused to explain his conduct. He was discharged by Respondent on May 4, 2000, for accessing and disseminating confidential documents, accessing employees'

computer accounts, and general dereliction of duties. Scott Moore's malfeasance included not backing up files as required and not establishing firewalls between files as appropriate.

13. When discharged, Scott Moore stated to the Respondent that he would get even with her. Scott Moore made allegations of misconduct by the Respondent to the local newspaper, the Florida Department of Law Enforcement (FDLE), and the Florida Ethics Commission.

14. Because of the situation, the Respondent eventually found it necessary to discharge Joe Moore, Scott's father. Mike Moore, Scott's brother, and Wanda Granado Moore, Scott's wife, resigned their employment. In sum, the firings of Scott and Joe did not favorably dispose the members of the family towards the Respondent. Their animus is recognized in considering their testimony.

15. In addition, Scott Moore contacted many former employees of the Respondent's office and encouraged them to come forward with any allegations of wrong-doing with which they were familiar. As a result of this, allegations of wrong-doing going back many years were presented to the Ethics Commission. Some of the allegations were subject to the statute of limitations, and this limited the testimony of some witnesses about their actions and observations.

16. One of the employees to come forward was Sharon Slater, who was the Respondent's secretary/assistant from 1993 until 1997 when she asked to be moved to a new social services section in Respondent's office. Slater worked in social services for over a year, but because of complaints and Slater's failure to complete certain educational requirements, she was moved to a secretarial position in the office in October of 1998. Slater tendered her resignation in April 1999, to be effective at the end of that month; however, before the end of the month, she became upset about the way an investigation of allegations she had made about Mike Moore's diverting mail belonging to her was handled, most particularly about her husband being contacted, and she resigned, effective immediately.

17. Slater was the source of much of testimony which was introduced in support of the allegations that she and others did personal and campaign-related work during working hours at the direction of the Respondent. The "hard" evidence of this work was taken from computer disks which Slater stated she copied in 1999 from the hard disk of Respondent's secretary long after Slater had left that position. The admissibility and credibility of these records are at issue in these proceedings as electronic records and as the printouts of those electronic records.

18. Although Slater testified that she copied all the records on the disk, only portions of these records were being introduced by the Advocate because other portions of the records downloaded by Slater related to confidential client files. Slater was able to remember some of the records/documents which she had typed. Of the documents she identified, at least one she remembered typing at her home. Some of the other records/documents bore her initials as typist.

19. Evidence was received from Melissa Moore Dearing that she typed letters on the same computer as Slater, and letters which she typed would have been saved upon the same directory that Slater copied. However, Ms. Dearing could not independently identify any of the letters which she typed. Ms. Dearing also stated that frequently when typing form letters bearing the initials of Slater as the typist, that she forgot to change them to reflect she had typed them.

20. Nicole Hanscom, a person knowledgeable in the operation of computers and the electronic files, testified. In sum, she testified that the "last modified date" is the date upon which the document was last saved. An existing document can be accessed, modified, printed out, but not saved and it will continue to reflect the date upon which it was previously saved notwithstanding that it was the source of a hard-copy piece of mail. Conversely, a document can be called up,

no changes made to it, and be saved, whereupon the file will reflect the last date it was saved as being the date upon which it was modified. These results are possible without any intentional "tinkering" with the files by knowledgeable persons.

21. Because of the ability to alter and manipulate files as described above, these documents and records would have been inadmissible but for the Respondent agreeing to their admissibility. Very little credence is placed in the disks, the directories of the disks, and the materials printed from those disks, notwithstanding their having been received.

#### CAMPAIGN ACTIVITIES

22. Respondent ran for re-election as Public Defender in 1996. Many of the activities for that campaign occurred in 1995 and 1996. A number of Public Defender Office employees were involved in Respondent's 1996 re-election campaign activities.

23. Ms. Slater worked on Respondent's 1996 re-election campaign. This campaign work was voluntary and performed on Ms. Slater's own time. Ms. Slater's volunteer activity for Respondent's 1996 re-election campaign included holding signs, displaying a yard sign, working a campaign golf tournament, and appearing at several campaign functions with other office staff.

24. Notwithstanding Ms. Slater's testimony to the contrary, it appears from the campaign rosters she signed and the testimony of others that she was a active participant in the

Respondent's campaign who did what she could to further the Respondent's re-election. This is consistent with Slater's perception of her own self interest about which she clearly was concerned. As an at-will employee and secretary/assistant to the Public Defender, it was highly unlikely she would be retained by anyone who defeated the Respondent for the office.

25. In addition, Ms. Slater also did other campaign work for Respondent's 1996 re-election campaign including typing campaign thank-you letters and keeping current a yard-sign list for Ms. Holt's review.

26. Many of the campaign thank-you letters typed by Ms. Slater were prepared on Public Defender office computers. Some were prepared on a Public Defender laptop at Ms. Slater's home; however, many were prepared on a Public Defender computer during public work hours.

27. Ms. Slater volunteered to maintain and update a typed list of sign locations and people who volunteered to display campaign signs for Respondent's re-election campaign. Information regarding signs came to Ms. Slater in writing and verbally from a variety of persons. The Respondent frequently provided information to Slater in the form of sticky notes, which included information on persons volunteering to put a sign up at their business or home.

28. A folder was maintained on Slater's desk into which notes about thank-you letters and sign information were placed by the Respondent or other office staff. Ms. Slater would also get information for the sign placements from telephone calls made to the office and from other employees.

29. Although Sharon Slater occasionally updated the sign lists on a Public Defender Office computer at her home, some of the updates were done during public work hours.

30. As pointed out in Respondent's proposed findings, the modified dates when compared with the Respondent's calendar reveal that many of the documents were prepared when the Respondent was out of the office. Clearly, the Respondent was unaware of what Slater did at Slater's home. Although Slater's testimony establishes that she prepared campaign letters and maintained the sign list at work and on equipment belonging to the Public Defender's office, she did so outside the presence of the Respondent and without Respondent's knowledge.

31. Credible evidence was received from many witnesses that Slater and all the other employees of the Respondent's office were instructed that they should not and could not engage in campaign activities at the office.

32. The Respondent provided a campaign office down the street from her office where volunteers could work. It was announced to the employees that they should do campaign work there or at home and not on state time.

33. The Respondent was not constrained by law from putting notes about signs or other campaign work she wanted accomplished in Ms. Slater's campaign work folder. It was understood that this work was not to be performed in the office.

34. Evidence was received that employees were counseled about failing to obey the directive not to do campaign work on the job. As stated above regarding the thank-you letters, the fact that much of the work alleged to have been done by Slater at work was done when the Respondent was not in the office substantiates that when work was done at the office by Slater it was in contravention of the policy.

35. Melissa Moore Dearing,<sup>8/</sup> who worked as an OPS employee for the Public Defender's Office on and off for years, also prepared campaign thank-you letters for the campaign. She obtained her work assignments from Slater's desk, and received her instruction in the same manner as Slater, by writings on legal paper or sticky-notes. It appeared that, except when pursuing a particular project for the Respondent, Dearing received her work assignments from Slater.

36. Dearing testified that she did not remember receiving any instructions on what she could and could not do for the campaign during office hours. It was clear from her testimony as a whole, that Dearing appreciated the job opportunities inherent in her OPS work for the Respondent, and was willing to do any work she was given to do. Although a member of the bar at this time and more knowledgeable of the restrictions imposed upon officers and employees, at the time these events occurred, Dearing did not consider her actions illegal or inappropriate.

37. Christine Sleater worked at the Public Defender's Office from January 1993 until 1998.

38. While an employee of the Public Defender's Office, Ms. Sleater worked as an administrative assistant; was promoted to computer trainer during the beginning of 1996; and, thereafter was promoted to director of automated systems, which position she held until leaving in 1998. From 1994 until the early part of 1996, Ms. Sleater did work as an administrative assistant for the Respondent as a back-up to Ms. Slater.

39. Ms. Sleater prepared at her home thousands of thank-you letters for the Respondent's campaign.

40. After completing the campaign letters, Ms. Sleater put them in an interoffice envelope and either gave them to Sharon Slater or placed them in the Respondent's in-box.

41. The Respondent directed Ms. Sleater to tell the head of the Public Defender's Office technology department, Mike Effner, to let her take a computer home so that she could do the thank-you letters. Mr. Effner was in charge of the computers at the Public Defender's office and for the campaign and was Ms. Sleater's boss at the time.

42. The Respondent testified that Mike Effner advised her that he had several of his own computers which were available to people working in the campaign. Her testimony was confirmed by others.

43. It is alleged that computer Ms. Sleater used was one belonging to the Public Defender's office. Even if Mr. Effner did provide Ms. Sleater a Public Defender's Office personal computer and printer, the Respondent did not know that Ms. Sleater was using Public Defender Office equipment to prepare thank-you letters for Respondent's 1996 campaign.

44. Ms. Vicky Butts served as the Respondent's Budget Director for the Public Defender's Office from March 1994 until March 1999, and was in charge of the Public Defender's Office computer inventory. Ms. Butts testified that Christine Sleater had Public Defender Office equipment at home to work on the Respondent's 1996 re-election campaign. She based her recollection upon a diary entry made in October 1996, regarding an office collection that was taken up for Ms. Sleater's

birthday gift. While Butt's recollection may have been jogged by this unrelated diary entry, it certainly does not buttress her testimony. Neither her testimony nor that of Sleater demonstrates that the Respondent knew that Effner had provided Sleater a Public Defender office machine as opposed to computer owned by Effner which was the Respondent's intent.

45. Although Sleater testified she got an office machine, the Respondent testified that Sleater did not sign out for one according to internal equipment inventories. Butts testified Sleater did sign out for a Public Defender computer. The inventories were not introduced by either the Advocate or the Respondent. The testimony is conflicting.

46. The fact that most of the Respondent's requests for the preparation of campaign thank-you letters were made on notes written by Respondent and placed in Sharon Slater's in-basket during office hours does not establish that the Respondent knew or should have been on notice that campaign thank-you letters were being prepared in the office on Public Defender's Office Equipment during public work hours.

47. The procedure was for those personnel who were typing letters to pick up letters to be typed from the folder on Slater's desk; to type them at home or at the campaign office; print them out at the campaign office; and return them to the Respondent for signature. The Respondent verified that the

campaign letters were delivered to her at the Public Defender's Office during public work hours. These were placed in an old brief case reserved for campaign related materials and picked up and delivered to the Respondent at various places.

48. After the Respondent signed the letters on campaign stationary, the Respondent put them back in Sharon Slater's in-box at the Public Defender's office, and Sharon Slater had them mailed out, using postage that was paid for by Respondent's 1996 re-election campaign.

49. Sharon Slater's testimony that she complied with Respondent's requests because she was afraid if she complained she would lose her job is not credible. Her testimony that she was afraid she would lose her job if she did not work to get the Respondent re-elected is credible because as an at-will employee, she very likely would have been replaced by a new incumbent.

50. Melissa Moore Dearing complied with the Respondent's requests because the Respondent provided her with employment during school breaks at Christmas and summers. She recognized that she was extremely fortunate to have such a benefactor in the Respondent's position.

51. All employees of the Public Defender's Office were "at will" employees. The Public Defender Employee Manual effective during the 1996 campaign explains:

All employment and compensation with the Public Defender's office is "at will" in that any employee can be terminated with or without cause, and with or without notice, at any time, at the option of either the Public Defender or yourself, except as otherwise provided by law. All employees are exempt from the State of Florida Career Service System and serve at the pleasure of the Public Defender.

52. Sharon Slater did feel uncomfortable about working on the Respondent's campaign during public work hours on Public Defender's Office equipment. The record in this case indicates that she engaged in these activities when the Respondent was out of the office.

53. The extra copies of the campaign materials which Slater stated she printed out and retained on the day that they were prepared were received into evidence; however, having had access to the disks, she could have printed them out at any time, and, as long as she did not execute a save on the document, it would have retained its original "modified" date. The campaign letters would have gone out on campaign letter head which was blue and yellow. Clearly the copies introduced may have been drafts, but they were not unsigned copies of final documents.

54. The Respondent was aware that it was improper for office staff to work on the Respondent's campaign during office hours. The Respondent testified that the typing of campaign letters on Public Defender's Office equipment and during office

time was not appropriate. These prohibitions were emphasized with all personnel from her office who were working on the campaign.

55. The Respondent's manual for Public Defender Employees which was in use during the 1996 campaign states: "Employees will not engage in political activity during working hours." The manual also stated that office equipment was to be used exclusively for Public Defender business purposes.

56. There is no evidence that the Respondent knew that personnel were typing campaign letters on office equipment. Slater and Dearing testified they "concluded" that the Respondent knew, but their conclusions were conjectural.

57. The allegation that the Respondent "directed" both Sharon Slater and Melissa Dearing to type campaign-related documents during public campaign work hours is based upon the assumption that placing the campaign work into a folder on Slater's desk during the day constituted a clear countermand of the instructions not to use Public Defender's Office equipment and not to work on public time.

58. The facts show that campaign materials were kept separate in the office; that employees received appropriate instructions regarding what they could and could not do; and that Slater's work on campaign materials occurred when the Respondent was out of the office.

59. There is no evidence that the Respondent ever "directed" Slater or Dearing to do campaign work at the office on office equipment, and there is no evidence that the Respondent knew that Public Defender equipment was used for campaign purposes.

PREPARATION AND DELIVERY OF COURSE MATERIAL

60. After becoming Public Defender, the Respondent began teaching as an adjunct professor at local colleges and universities. Prior to this time, other than substitute teaching in law school, the Respondent had never taught. The first institution where the Respondent taught was Hillsborough Community College in 1995. She has since taught courses at the University of Tampa, the University of South Florida, and the University of Phoenix.

61. The Respondent taught a course in American Government at Hillsborough Community College in the Spring and Fall semesters of 1995. The Respondent was paid \$1,500 per semester for teaching American Government at Hillsborough Community College.

62. After that, the Respondent taught one semester, at the University of Tampa in 1998 or 1999 and was paid \$1,000 for her teaching.

63. The Respondent taught one semester at University of South Florida (USF) in 1997, and then taught at USF the spring

and fall semesters of 1998, the spring and fall semesters in 1999, and one semester in 2000. The Respondent was paid \$2,500 for each semester she taught at USF.

64. The Respondent has taught at the University of Phoenix since 1998. The University of Phoenix is a private university. Respondent receives between \$1,300 and \$1,600 for each 6 week term of classes, consisting of one 4-hour class each week, that she taught at the University of Phoenix.

65. Throughout her tenure as an adjunct professor, the Respondent has used Public Defender office staff and resources during public work hours to prepare course materials for her students. She has used her secretary/assistants to type lesson plans, type syllabi, type and edit examinations, deliver materials, and proctor make-up examinations for the courses that Respondent was teaching. In one instance, Melissa Dearing proctored one or more examinations for the Respondent at night, but purely on a voluntary basis.<sup>10/</sup>

66. While most of the documents typed by staff in support of this activity were between one and three pages, the total, over time, cannot be considered de minimus. Neither can the income be called de minimis from teaching these courses, which for a portion of the time ran between \$2,500 and roughly \$7,500 annually.

67. Slater and Melissa Moore Dearing readily assented to doing this work, and Dearing volunteered to proctor the examinations at night. Wanda Granado Moore assented to the preparation of these materials, and records indicate that she was paid between \$5,000 and \$6,000 in overtime. The Respondent did not feel that these activities at work were wrong; she considered that the work was within the range of work which could be assigned to these personnel; but she did not consider it contrary to their duties or to her duties.

68. The Respondent asserts that her actions were justified because there was an overriding public purpose to her teaching.

69. In support of her argument that her teaching served a public purpose, the Respondent offered the testimony of several judges and retired judges.

70. The reason that a judge's teaching serves a public purpose is that the Code of Professional Responsibility encourages judicial officers to educate bench, bar, and the public about the law. The de minimis use of public office resources to assist in teaching courses is not inconsistent with a judge's public duties. All of the judges who testified indicated that the use of public resources should be de minimis in light of the requirements that it not interfere with the performance of the judge's judicial duties.

71. Although a public purpose is served by education, and teaching is not antithetical to the duties of the Public Defender, unlike judges, education is not part of the Respondent's public duties. Therefore, her teaching does not further the aims and goals of her office. Although the Respondent contends that she really does not teach for the pay and that her outside teaching activities are a form of "community service," as stated above, her compensation was more than de minimis and must be considered as personally benefiting the Respondent.

DIRECTING PUBLIC EMPLOYEE TO TAKE  
RESPONDENT'S PERSONAL AUTOMOBILE IN FOR REPAIRS

72. It is alleged that on more than five occasions while Sharon Slater was employed as Respondent's secretary with the Public Defender's Office, Respondent had Ms. Slater take or retrieve Respondent's Mercedes from the repair shop during public work hours. At least some of these occurrences were after August of 1995 and in 1996. Other Public Defender's Office employees also took Respondent's car to the shop. On at least some of these occasions, another Public Defender Office employee was also required for the pick-up or delivery of the vehicle.

73. One of the repair shops where Ms. Slater dropped off or picked-up the Respondent's car was located approximately 10 to 15 minutes from the Public Defender's Office. One of the shops she used was immediately across the street from the Respondent's office.

74. One of the problems with these allegations and the evidence presented in support of them is that they are vague with regard to when, where, why and how the event(s) occurred. If two employees were involved, and if it was during work hours, and if the garage to which the car was delivered was the one further away, then the pick-up or delivery of the Respondent's automobile might require approximately one hour of Public Defender Office staff time, and if it was after October of 1995, it would not be barred by the statute of limitations.

75. If the accusation is that the Respondent directed Slater to pick up or take her car to the garage, the evidence adduced from several members of the staff and the Respondent was that Sharon Slater volunteered to take Respondent's car to and from the repair shop. Sharon Slater's testimony is not credible that she did not volunteer. Slater may have felt this was demeaning, but her public demeanor and overt conduct was one of helpful collegiality, and there was specific testimony stating she volunteered to pick up the Respondent's car during at least one staff conference. In addition to the conference mentioned

above, other instances in which staff picked up or took the Respondent's car included when the Respondent was in trial.

76. The judicial district the Respondent is in covers a large geographic area. Her car is a tool in her management of her office. Sharon Slater's was more than a secretary for the Respondent; she also assisted her in non-clerical duties. While taking or picking up the Respondent's automobile benefited the Respondent personally, if it permitted the Respondent to stay in a staff meeting rather than leaving to pick up the car before the garage closed, it directly supported and assisted the Public Defender in conduct of her office. The "service" was for more than the Respondent's benefit.

77. In sum, Slater's allegations and the evidence presented in support of them are vague as to time, number and circumstances, to include whether Slater made up the lost time. They are vague about how many occurred with the period for which Respondent can be prosecuted.

78. The long delay between the events complained of and the prosecution of this case prevent either side from presenting the detail necessary to determine this issue. The Advocate's original allegations went to the Respondent's "requiring" Slater to pick up the car; however, the evidence showed categorically that this was not the case. The Advocate failed, as stated above, to show how many times this happened; when it happened;

the circumstances under which it happened; and whether Slater failed to make up the time if she volunteered to pick up the car. These details are necessary to determine whether there is no benefit to the state and a violation, and to determine if it is not barred by the statute of limitation.

DIRECTING A PUBLIC EMPLOYEE TO MAKE BANK DEPOSITS  
FOR RESPONDENT AND HER MOTHER DURING PUBLIC WORK HOURS

79. Throughout the Respondent's tenure as Public Defender, Joseph Moore, while employed as an investigator for the Public Defender's Office, made bank deposits for the Respondent and her mother during public work hours.

80. The overwhelming evidence is that all of these deposits were made by Moore voluntarily, frequently in conjunction with the deposit of his own check, and while in the direct pursuit of other office business in such manner that the loss of time was negligible.

81. As stated above regarding the pick up of the car, when the errand is undertaken voluntarily, and the public is better served by having the subordinate take care of a personal task for an official, it serves a public purpose. If it is not voluntary, it opens the door to abuse. In this case, there is no question that it was voluntary, and the public was not ill-served by Moore's actions.

DIRECTING PUBLIC EMPLOYEES TO TYPE  
PERSONAL LETTERS DURING PUBLIC WORK HOURS

82. The evidence shows that Sharon Slater typed up a number of documents unrelated specifically to Public Defender business during public work hours on Public Defender Office equipment while Ms. Slater was employed as the Respondent's assistant.

83. Campaign letters are discussed above. The Respondent admits that Slater typed other non-legal materials for her. These documents include thank-you letters, business letters, and other type-written materials not related to the Public Defender's office or campaign.

84. The Respondent gave the thank-you and business letters to Slater to be typed as part of her general work. An example of this type of correspondence is Advocate's Exhibit 6 Slater-S\McDowell.let, which is a letter thanking Mr. McDowell for inviting her to an event welcoming an Olympic Gold Medalist. While this is not legal in nature, it clearly is not a campaign letter, but one of the type of letters that elected officials write to constituents thanking them, congratulating them, and recognizing them. This type of correspondence is not "personal," and it generally furthers the work of the office.

85. Other letters which the Respondent had Slater type were business letters not related to the Public Defender's office. They include, but are not limited to, letters about a leasehold interest, a letter tendering payment of a credit card bill, and a release of liability for a pet grooming business in which the Respondent had an interest. See Slater\_S\Hobbs.let; Slater\_S\Julpet.WPD; Slater\_S\RCI.let; Slater\_S\USAIR.Let.

86. According to the Respondent, Ms. Slater always volunteered to type up the private business documents because she was the Respondent's friend. Ms. Slater, however, testified that she typed up the documents because the Respondent directed her to do so. It is more consistent with Slater's general conduct that she volunteered to type these documents.

87. The evidence clearly showed Slater typed the personal documents for the Respondent on the Public Defender Office computer and on public time.

88. The Respondent contends that occasional use or "incidental abuse" of Public Defender Office equipment for personal letters, on a minimal basis, was permitted. The Respondent was not the only person to take advantage of this opportunity, and the files presented included a letter Slater had written in her own behalf, and a letter she had written in Scott Moore's behalf.

89. Ms. Slater served as the Respondent's assistant for four full years. In mitigation, the personal business letters typed for Respondent presented at the hearing given the time covered are not numerous.

#### CONCLUSIONS OF LAW

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

91. Section 112.322 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 (the Code of Ethics for Public Officers and Employees).

92. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceedings. Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting that Respondent violated Section 112.313(6). Therefore, the burden of establishing by clear and convincing evidence the elements of Respondent's violations is on the Commission.

93. The Supreme Court of Florida in In Re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), stated:

[C]lear 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.

94. The Supreme Court of Florida also explained that although the "clear and convincing" standard requires more than a "preponderance of the evidence," it does not require proof "beyond and to the exclusion of a reasonable doubt." Id.

95. Section 112.313(6) provides:

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. This section shall not be construed to conflict with s. 104.31.

96. The term "corruptly" is defined by Section 112.312(9) 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.

97. The issues for determination are:

I. Whether the Respondent violated Section 112.313(6), Florida Statutes, by directing Public Defender's Office employees to work on the Respondent's re-election campaign during their public working hours;

II. Whether the Respondent violated Section 112.313(6), Florida Statutes, by directing Public Defender's Office employees, during public working hours and using public resources, to prepare and deliver materials for courses that the Respondent was teaching;

III. Whether the Respondent violated Section 112.313(6) by directing a Public Defender's Office employee to take Respondent's personal automobile in for repairs during public work hours;

IV. Whether the Respondent violated Section 112.313(6) by directing a Public Defender's Office employee to make personal bank deposits for the Respondent and her mother during public work hours; and

V. Whether the Respondent violated Section 112.313(6) by directing Public Defender Office employees to type personal letters for the Respondent during public work hours.

First Issue

98. Regarding the first allegation that the Respondent directed Public Defender's Office employees to work on Respondent's campaign during public working hours, the evidence does not support a finding that the Respondent did this. This allegation is built upon the testimony of Ms. Slater and Mrs. Dearing that the Respondent "directed" them to do campaign work on the job. Their testimony taken at its broadest was that the Respondent placed campaign-related work into a folder on Slater's desk with sticky notes or other written directions as to what should be done.

99. Slater's testimony that she did campaign work in the office is credible; however, she did this because she believed that her continued employment was tied to the Respondent's winning re-election, and it was easier for her to do this work at her own desk, on the Public Defender's equipment, during working hours than it was for her to go the campaign office over lunch or after work. However, there is no evidence that the Respondent knew this or condoned it. In fact, if one compares the dates much of the work was done with the Respondent's

calendar, one finds that Slater did much of the campaign work while the Respondent was out of the office.

100. Mrs. Dearing, who has some animus towards the Respondent, testified that the Respondent never told her to do anything, but that she got her work assignments from notes stuck to documents and telephone messages. She did not remember being told not to do campaign work during the campaign; however, she indicated that her failure to remember did not mean she did not receive the instructions, just that she did not remember it. The evidence does not show the Respondent directed Dearing to do campaign work at the office.

101. While there is no specific allegation regarding the use of Public Defender office equipment in the campaign, the Advocate did not prove that the Respondent improperly directed or permitted the use of Public Defender office equipment in the campaign. Again the issue is whether the Respondent was aware of the usage.

102. The testimony of Ms. Sleater was offered to show that the Respondent "ordered" Mike Effner to let Sleater take a computer home to do campaign work. Effner, who was in charge of computers at the office and for the campaign, had computers available that were not office computers for campaign workers. The Respondent's intent was that Sleater get a campaign computer.

103. Sleater testified she had an office computer which she kept until she left the office and typed office work on it long after the campaign was over. It is conceivable that Sleater was given an office computer by Effner; however, the issue ultimately is whether the Respondent was aware that Effner gave Sleater a Public Defender computer for campaign work. The evidence is not clear and convincing on this point.

### Third Issue

104. Passing over the second issue, the third issue was the allegation that the Respondent directed employees to take her personal automobile in for repairs during working hours. This allegation was based primarily upon the testimony of Slater, who testified that she took the car to and from the shop for the Respondent because she feared for her job. The testimony of Slater that she feared for her job was not credible.

105. Credible evidence was received that Slater volunteered to pick up and take the Respondent's car to the garage. Slater's volunteering was not unusual because she was always friendly, helpful and collegial towards the Respondent and others in the office. There was evidence that professional staff frequently helped the Respondent in getting her car to the shop, and that she reciprocated in assisting them. Credible evidence was received that Slater's offers were generally in the

context of helping the Respondent when there was a conflict between picking the car up and conducting Public Defender office business. It was not proven that the Respondent directed Slater to take the Respondent's car to the shop, or that the functions of the office were not facilitated by permitting Slater to do this on public time. Further the indefiniteness as to dates raises issues about which, if any, of the incidents occurred within the period not barred by the statute of limitations.

#### Fourth Issue

106. The fourth allegation is that the Respondent directed Joe Moore and others to take bank deposits to the bank for her and her mother. The facts showed that Joe Moore took bank deposits to the bank for the Respondent and her mother. This was part of a multitude of things which Moore did for the Respondent voluntarily before and after coming to work for the Public Defender's office. Joe Moore did not testify; however, credible evidence was received that he voluntarily did these errands in the context of making his own deposits and doing his own work in such a way that the loss of time from his job was non-existent. There was no credible evidence about "other" people taking bank deposits. The allegation that the Respondent directed personnel to make bank deposits for her was not proven.

## Issue Five

107. The fifth allegation is that the Respondent directed employees to type personal letters during public work hours. The letters which were introduced in support of this allegation were letters which were down-loaded by Slater after she was the Respondent's secretary/assistant. Slater testified that she went into Holt's file folder and downloaded the files that were there indiscriminately. Slater was unable to identify many of the documents that were on these disks. Some of the documents on these disks were identified by others as having been typed by them, and being related to work within the office. Further, because they contained confidential files relating to litigation that is on-going in the Public Defender's office, the disks themselves could not be introduced. What was tendered were selected documents extracted from these disks. This evidence generally does not meet the standards of reliability such that it would be used to determine critical issues. It would not be considered in this case if many of these documents had not been identified by the Respondent, and she had not admitted that Slater typed them. However, the Respondent also testified that Slater voluntarily typed these letters for her, and her testimony is credible. Unfortunately, it is immaterial whether Slater did this voluntarily or was directed to type the letters.

In either case, the typing of certain of the letters was improper.

108. These letters fall into three categories: campaign related; letters of thank-you, congratulation, or regret from Respondent as the Public Defender; and the Respondent's non-Public Defender business. The campaign letters are discussed above, and were not the responsibility of the Respondent.

109. The letters identified in the findings as being those of thank-you, regret and congratulation from the Public Defender are expected from public officials, and were properly typed by official staff.

110. This leaves the Respondent's non-public defender, business letters typed for the Respondent.

111. While the number of these letters are few in relation to time, they are a violation of the provisions of Section 112.313(6).

112. The penalty suggested by the Advocate is totally inappropriate in terms of the value of the letters typed. The penalty imposed should consider the costs of a business letter and the number of letters written over the seven-year period.

#### Issue Two

113. The penalty for the violations is within the discretion of the Commission, but should consider the nature and extent of the violation.

114. The second issue is that the Respondent directed employees of the office to prepare and deliver materials for courses the Respondent was teaching.

115. There is no question that the Respondent asked Slater, Dearing and others to prepare various materials to include lesson outlines, rosters, syllabi, and grade reports in support of her teaching courses between 1995 and 2000. These were generally less than three pages in length and would have taken no more than three to five minutes to prepare.

116. The Respondent does not deny doing this. Her defense is that there was no intent to violate the law and she was not on notice that this was wrong. In support of this argument, the Respondent points to various judicial officers who taught for compensation and used de minimis amounts of staff time in support of their activities. The conduct of the judges is not in question, and this is not a comment on the appropriateness of their conduct because they are regulated by a different set of rules.

117. Canon 4 of the Code of Judicial Conduct encourages judges "to speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, the administration of justice, and the roles of the judiciary . . . subject to the requirements of this Code." The Code

provides that these other duties shall not interfere with the proper performance of judicial duties.

118. The judges who testified uniformly stated that they felt that minimal use of staff to support their teaching was not precluded, but that they minimized staff involvement so that it would not interfere with the proper performance of judicial duties.

119. The majority of the staff usage by the Respondent was limited to items of only a few pages. This typing did not interfere with the performance of Respondent's duties; however, the Respondent is not governed by the Judicial Canons.

120. The Respondent is governed by another set of rules which provides that "[N]o public officer . . . shall corruptly use . . . her official position or any property or resource which may be within . . . her trust . . . to secure a special privilege, benefit, or exemption for . . . herself or others."

121. The statute defines "corruptly" to mean "done with a wrongful intent and for the purpose of obtaining . . . or receiving compensation for . . . some act or omission of a public servant which is inconsistent with the proper performance of . . . her public duties."

122. The issue of wrongful intent is a matter for the trier of fact to determine. Dobry v. State, 211 So. 2d 127 (Fla. 3d DCA 1968). The court in Blackburn v. State, 589 So. 2d

431 (Fla. 1st DCA 1991) stated regarding "wrongful intent" that "[A]n essential element of the charged offense under section 112.313(6) is the statutory requirement that appellant acted with wrongful intent, that is, that she acted with reasonable notice that her conduct was inconsistent with the proper performance of her public duties and would be a violation of the law of code of ethics[.]"

123. Unlike a judge, the Public Defender is not "encouraged to speak, write, lecture, teach and participate in other quasi-judicial activities[.]" There is no duality of function to warrant the expenditure of staff time to support the Respondent's activity in this regard. However, for the most part, this use of staff was de minimis except for the outline prepared by Dearing. Regarding the outline of the book prepared by Dearing, it appeared that this was "make work" for Dearing during one of Dearing's periods of employment. It was a major part of Dearing's effort and was not in support of the office's mission. However, this was one occurrence of limited scope.

124. In considering whether a violation occurred, the dual scope of the violation must be considered. There was a long-term, on-going misuse of staff about which there could be some confusion, and there was a short-term, major misuse of Dearing's time about which little confusion could have existed. However, this latter violation had more to do with misuse of position by

hiring a friend's daughter for a "make work" job than with teaching.

125. The Respondent's de minimis use of staff was a violation because she is presumed to know the nature and scope of her duties. I do not find that this should be severely penalized; first, because this is a case of first impression, and, second, because it was de minimis use of staff. Regarding the misuse of Dearing, I find that this clearly violated this provision; however, this misuse was of limited duration and really unrelated to teaching.

126. Based upon these considerations, a penalty in the range proposed by the Advocate, an amount equal to or greater to the Respondent's total income for teaching during the period, seems unduly large.<sup>11/</sup>

127. Requiring the Respondent to repay Dearing's salary for the period she was engaged in this activity plus the amount the Commission would assess for both types of violation of the statute would be sufficient penalty.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that:

1. Count 1 be dismissed regarding the Respondent's directing employees to work on the re-election campaign;

2. Count 3 be dismissed regarding the Respondent's directing an employee to take her personal automobile in for repairs;

3. Count 4 be dismissed regarding the Respondent's directing an employee to make bank deposits for her and her mother;

4. A civil penalty of \$1,500 be imposed because the Respondent violated Section 112.313(6) by having personal letters typed by public employees during public working hours; and

5. Restitution in the amount of \$2,000, and a civil penalty of \$2,000 be imposed because the Respondent violated Section 112.313(6) by having school materials prepared by public employees during public work hours.

DONE AND ENTERED this 30th day of October, 2003, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of October, 2003.

ENDNOTES

<sup>1/</sup> Advocate's Exhibit 6 SHOP was received as Holt's Exhibit 6 Shop. Transcript of Final Hearing, p. 667.

<sup>2/</sup> Of those, Advocate's Exhibits 7 CULBREAT.OAK, SAM.DOR and TPD.LET were received as Holt Exhibits 7 as opposed to Advocate's Exhibits 7, with the same designations. See Transcript of Final Hearing, pp. 670, 685, 690.

<sup>3/</sup> Advocate's Exhibit 8I was received as Holt's 8I. Transcript of Final Hearing, p. 690.

<sup>4/</sup> During the final hearing, the full transcript of Respondent's Sworn Statement given to the Ethics Investigator was substituted for the partial transcript originally offered as part of Advocate's Exhibit "12." The full transcript was admitted into evidence as a substitute for Advocate's Exhibit 12. See Transcript of Final Hearing, p. 1143.

<sup>5/</sup> Advocate's Exhibit 17 is a composite of phone messages from Joseph Moore regarding bank deposits. Transcript of Final Hearing, pp.1096, 1000 [identified and received]. Advocate's Exhibit 19 is a composite of arrangement, by date, of the file lists on Sharon Slater Disks #'s 1, 2 & 3. See Transcript of Final Hearing, pp. 1947, 1964 [identified and received].

<sup>6/</sup> The testimony of Judge Gross was taken by deposition on July 31, 2003.

<sup>7/</sup> The FDLE investigated and determined there were not crimes committed.

<sup>8/</sup> Melissa Moore Dearing's last name was Moore prior to her marriage. Ms. Dearing is the daughter of Joseph Moore, one of those who filed a complaint with the Ethics Commission against Respondent. (T-250; R-49)

<sup>9/</sup> The course that she taught in the Spring of 1995 occurred prior to the reach of the statute of limitations and has not been considered in this case.

<sup>10/</sup> Dearing and others proctored examinations and taught courses for the Respondent during this period. Dearing clearly volunteered to do this as did the other personnel, who were mostly professional staff. This was not a violation the law because it was not done on public time and was voluntary.

<sup>11/</sup> The Respondent was compensated between \$1,000 and \$2,500 per course for teaching these courses. The Respondent taught three different classes during the years 1998 and 1999, and two different courses in 2000. She made approximately \$6,600 from teaching in 1998 and 1999, and \$4,100 for teaching in 2000.

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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.