

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KENNETH JENNE,)
)
Petitioner,)
)
vs.) Case No. 08-1829
)
DEPARTMENT OF MANAGEMENT)
SERVICES, DIVISION OF)
RETIREMENT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was not held in this case. The parties entered a Joint Stipulation of Facts and Joint Exhibits on November 10, 2008. In accordance with their agreement the parties filed Proposed Recommended Orders to be considered in the preparation of a Recommended Order. This Recommended Order is entered in accordance with the agreement of the parties.

APPEARANCES

For Petitioner: Mark Herron, Esquire
Thomas M. Findley, Esquire
Messer, Caparello & Self, P.A.
2618 Centennial Place
Post Office Box 15579
Tallahassee, Florida 32317-5579

For Respondent: Clifford A. Taylor, Esquire
Barbara M. Crosier, Esquire
Geoffrey M. Christian, Esquire
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether the Petitioner has forfeited his rights and benefits under the Florida Retirement System (FRS) as a result of a guilty plea in the United States District Court, Southern District of Florida, for acts committed in connection with Petitioner's employment with the Broward County Sheriff's Department.

PRELIMINARY STATEMENT

On April 14, 2008, the Petition for Formal Administrative Hearing (the Petition) was filed with the Division of Administrative Hearing for formal proceedings. The Petition challenged the decision of the Department of Management Services, Division of Retirement (Respondent or Department) dated January 24, 2008, that notified Petitioner, Kenneth Jenne (Petitioner), that his retirement benefits had been forfeited in accordance with Florida law. More specifically, the notice claimed that in accordance with forfeiture statutes, Sections 112.3173 and 121.091(5), Florida Statutes (2008), Petitioner had pled guilty to crimes that required the forfeiture of this retirement benefits. The Petition timely challenged that decision.

In accordance with the Joint Response to the Initial Order (and because Petitioner was incarcerated and unavailable to meaningfully contribute to the preparation for hearing) the

hearing was scheduled for formal proceedings for October 14-15, 2008. On September 22, 2008, Petitioner filed a Motion for Continuance of Final Hearing. Additionally, the Respondent filed a Motion for Order Determining That No Genuine Issue as to Any Material Fact Exists. A telephone conference call was conducted with the parties on October 9, 2008, to afford the parties with an opportunity to comment on the pending motions. Subsequently, the hearing was cancelled and the parties' stipulation regarding the submission of evidence in this cause was entered into the record.

In essence, the parties agreed to submit a statement of facts along with exhibits upon which the undersigned would enter a recommended order. Although the Respondent maintained that there were no disputed issues of material fact to be resolved by an administrative hearing, Petitioner contended that there are issues that preclude an informal proceeding. Nevertheless, the parties represented that the case should proceed with the entry of a recommended order based upon a record that the parties would jointly submit.

Respondent requested, and official recognition has been taken of the following case law pertinent to this matter: Shields v. Smith, 404 So. 2d 1106 (Fla. 1st DCA 1981); Russell v. State, 675 So. 2d 961 (Fla. 1st DCA 1996); Busbee v. State, Division of Retirement, 685 So. 2d 914 (Fla.

1st DCA 1996); Newmans v. State, Division of Retirement, 701 So. 2d 573 (Fla. 1st DCA 1997); Jacobo v. Board of Trustees of Miami Police, 788 So. 2d 362 (Fla. 3rd DCA 2001); Desoto v. Hialeah Police Pension Fund Board of Trustees, 870 So. 2d 844 (Fla. 3rd DCA 2003); Warshaw v. City of Miami Firefighters' & Police Officers' Retirement Trust, 885 So. 2d 892 (Fla. 3rd DCA 2004); Hames v. City of Miami Firefighters' & Police Officers' Retirement Trust, 980 So. 2d 1112 (Fla. 3rd DCA 2008); and Simcox v. City of Hollywood Police Officers' Retirement System, 988 So. 2d 731 (Fla. 4th DCA 2008).

The parties submitted the Joint Stipulation of Facts and the Joint Exhibits on November 10, 2008. The Proposed Recommended Orders were filed a week later. The stipulations of fact, all exhibits referenced by the stipulation, and the parties' proposed orders have been fully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

From the Joint Stipulation of Facts:

1. The Florida Retirement System (FRS) is a public retirement system as defined by Florida law.
2. Respondent is charged with managing, governing, and administering the FRS on behalf of the Department of Management Services.
3. Petitioner was employed as an Assistant State Attorney

by the State Attorney's Office from December 1972 to January 1974. During this time, Petitioner was a member of the FRS and this service is credited as service under the FRS.

4. Petitioner was employed as Executive Director of the Broward County Charter Commission from January 1974 to November 1974. During this time, Petitioner was a member of the FRS and this service is credited as service under the FRS.

5. Petitioner was employed by the Broward County Board of County Commissioners from March 1975 to November 1978. During this time, Petitioner was a member of the FRS, and this service is credited as service under the FRS.

6. In November 1978, Petitioner was elected to serve as a member of the Florida Legislature; he continued to serve as a state legislator for approximately 18 years. As a state legislator, Petitioner was a member of the FRS class of State Elected Officers, and this service is credited service under the FRS.

7. Most recently, Petitioner was the elected Sheriff of Broward County.

8. By reason of his service as Sheriff, Petitioner was a member of the FRS.

9. Petitioner was initially appointed Sheriff in January 1998 by then-Governor Lawton Chiles.

10. Petitioner was subsequently elected Sheriff in 1998 and reelected in 2000 and 2004.

11. As Sheriff of Broward County, Petitioner was Broward County's chief law enforcement officer and was responsible for directing the Broward County Sheriff's Office ("BSO"), a law enforcement agency that currently employs over 6,000 employees.

12. The office of Sheriff is a constitutional office established under Article VIII, Section 1(d), Constitution of Florida.

13. Upon assuming his duties as Sheriff of Broward County, Petitioner took an oath to support, protect, and defend the Constitution and Government of the United States and the State of Florida and to faithfully perform the duties of sheriff pursuant to Article II, Section 5(b), Constitution of Florida.

14. On or about September 4, 2007, Petitioner wrote a letter to Governor Charlie Crist notifying him of his resignation from the office of Sheriff of Broward County.

15. By reply letter of the same date, Governor Crist accepted Petitioner's resignation.

16. Petitioner is not retired from the FRS and currently does not receive FRS retirement benefits.

17. On or about September 4, 2007, Petitioner was charged, by information, in the United States District Court for the Southern District of Florida, in case number 0:07-cr-60209-WPB,

with one count of conspiracy to commit mail fraud, in violation of Title 18, United States Code, Section 371, and three counts of filing a false tax return, in violation of Title 26, United States Code, Section 7206(1). The same four-count information is filed in U.S. District Court (S.D. Fla.) case number 0:07-cr-60209-WPB as document 1.

18. At all times relevant to the information, Petitioner was the Sheriff of Broward County.

19. The section of the information entitled "General Allegations" contains numerous references to Petitioner's service as Sheriff of Broward County and the power and authority vested in that position.

20. The "Objects of the Conspiracy" contained in count one of the information states:

An object of the conspiracy was for JENNE to unlawfully enrich himself by obtaining monies from P.P. and L.N., who were Broward Sheriff's Office vendors, by making false representations, omitting to state material facts, and concealing material facts concerning, among other things, the ultimate destination of monies that JENNE asked P.P. and L.N. to give to his secretaries, A.V. and M.Y. It was further an object of the scheme for JENNE to perpetuate and conceal the scheme and the actions taken in furtherance of it by, among other things, making false, misleading, and incomplete statements in public filings and to investigators.

21. The "Manner and Means of the Conspiracy" contained in count one of the information states:

- a. JENNE and M.Y. arranged for JENNE to receive \$20,000 from P.P. by having the money transferred from P.P. through JENNE's secretary, M.Y., to JENNE. JENNE and M.Y. did this in order to conceal that JENNE was the true recipient of the funds.
- b. JENNE provided L.N. with access to off-duty Broward Sheriff's Office deputies, who L.N. hired to do work for his companies. On two different occasions, in exchange for the access to the deputies, JENNE instructed L.N. to pay money to JENNE's secretary, A.V., purportedly to compensate A.V. for work done for L.N. JENNE instructed A.V. to cash checks given to her by L.N. and to have the cash deposited into JENNE's bank account. JENNE and A.V. did this in order to conceal that JENNE was the true recipient of the funds, which totaled \$5,500.
- c. JENNE perpetuated this fraud and attempted to prevent its detection by mailing incomplete and misleading annual financial disclosure forms, which did not list his receipt of the payments from P.P. and L.N., to the Florida Commission on Ethics.

22. On or about September 5, 2007, after being advised of the nature of the charges against him, the above-referenced information, and of his rights, Petitioner waived in open court prosecution by indictment and consented to proceeding by information. The same waiver of indictment is filed in U.S. District Court (S.D. Fla.) case number 0:07-cr-60209-WPB as document 13.

23. On or about September 5, 2007, Petitioner entered into an agreement with the United States of America to plead guilty as charged in the four-count information. The same plea agreement is filed in U.S. District Court (S.D. Fla.) case number 0:07-cr-60209-WPB as document 3.

24. Paragraph 7.c. of the plea agreement provides:

7. The United States and the defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the court make the following findings and conclusions as to the sentence to be imposed:

* * *

c. Advisory sentencing range on the conspiracy to commit mail fraud count: That, pursuant to U.S.S.G. § 2X1.1, the applicable guideline to be used in calculating the defendant's advisory sentencing range on the conspiracy to commit mail fraud count is § 2B1.1; that under § 2B1.1(a)(1), the Base Offense Level is 7; that under § 2B1.1(b)(1)(C), four levels are added because the loss was between \$10,000 and \$30,000; that under § 3B1.3, two levels are added because of the defendant's abuse of his position of public trust; and that under § 3E1.1(b), two levels are subtracted for acceptance of responsibility . . .

The United States Sentencing Guide, Section 3B1.3, referenced in paragraph 7.c of the plea agreement, provides in relevant part that "[i]f the defendant abused a position of public . . . trust . . . in a manner that significantly facilitated the commission

or concealment of the offense, increase by 2 levels." USSG § 3B1.3.

25. Paragraphs 10. and 12. of the plea agreement provide:

10. The defendant confirms that he is guilty of the offenses to which he is pleading guilty; that his decision to plead guilty is the decision that he has made; and that nobody has forced, threatened, or coerced him into pleading guilty. The defendant affirms that he has discussed this matter thoroughly with his attorneys. The defendant further affirms that his discussions with his attorneys have included discussion of possible defenses that he may raise if the case were to go to trial, as well as possible issues and arguments that he may raise at sentencing. The defendant additionally affirms that he is satisfied with the representation provided by his attorneys. The defendant accordingly affirms that he is entering into this agreement knowingly, voluntarily, and intelligently, and with the benefit of full, complete, and effective assistance by his attorneys.

* * *

12. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

26. On or about September 5, 2007, Petitioner entered a statement of factual basis for guilty plea with the United States of America (hereinafter "factual proffer"), wherein he agreed that, if the case went to trial, the government would have been able to establish the facts recited therein beyond a

reasonable doubt. The same factual proffer is filed in U.S. District Court (S.D. Fla.) case number 0:07-cr-60209-WPB as document 8.

27. On or about September 5, 2007, a hearing was held in which Petitioner pled guilty as charged in the information.

28. At the hearing, Petitioner admitted to committing the acts set forth in the charges and to which he pled guilty.

29. In addition, at the hearing Petitioner admitted to the following facts and to committing the following actions:

a. At no point in time did Petitioner ever disclose to the public that he received an \$8,130 benefit from P.P. in November 2001 in connection with the demolition of a house he owned in Lake Worth, Florida. Within P.P.'s internal accounting system, the \$8,130 check was attributed to the "HIDTA project" (i.e., a lease committing BSO and HIDTA as tenants of an office building owned by P.P.). Petitioner never reported the \$8,130 benefit on any of his state ethics disclosure forms, nor did he ever make a disclosure in any other fashion.

b. At no point in time did Petitioner ever disclose to the public that, in September 2002, he had received \$10,000 from P.P. as a reward for his work concerning a new company called SuperTech Products, Inc. Petitioner never reported the \$10,000 payment on any of his state ethics disclosure forms, nor did he ever make a disclosure in any other fashion.

c. Prior to becoming Sheriff, Petitioner was a partner in Conrad, Scherer & Jenne, a law firm located in Fort Lauderdale. Petitioner was with the firm from 1992 through the beginning of 1998, when he left to become Sheriff. While Petitioner was at the firm, he, like some other partners, drove a car paid for by the firm's investment arm, CSJ Investments. In October, 1997, at Petitioner's request, the law firm, through CSJ Investments, bought a used 1994 Mercedes E320 convertible for Petitioner to drive. The price of the Mercedes was \$61,297. Rather than pay for the car all at once, the firm financed the car with a 60-month loan. When Petitioner left the firm in early 1998 following his appointment as Sheriff, he took the Mercedes with him. Despite the fact that Petitioner no longer worked for the firm, the firm continued to pay off the Mercedes loan for the balance of the loan term, making the final payment in 2003. The loan payments were \$1,320 per month, resulting in a total eventual cost to the firm of approximately \$79,234 in loan payments, all but approximately \$1,320, of which were made after Petitioner had already left the firm to become Sheriff. In addition, after Petitioner left the law firm, the firm continued to pay for the insurance on the Mercedes. The insurance payments continued even unto September 2007. At that time, the firm had made a total of approximately \$30,961 in insurance payments on Petitioner's behalf, all but approximately

\$880, of which were made after Petitioner had already left the firm to become Sheriff. Petitioner never disclosed any of the loan payments or insurance payments made by the firm on his behalf on any state ethics filing. During the time that Petitioner was receiving these undisclosed payments from Conrad, Scherer, the firm was billing BCSO for legal work that it was doing on its behalf.

30. At the hearing, Petitioner did not take any exception or make any objections to the facts as summarized in the factual proffer. In fact, with the exception of one non-substantive addition, Petitioner accepted the factual proffer as indicated.

31. On or about November 16, 2007, a judgment was entered on the aforesaid guilty plea, wherein Petitioner was adjudicated guilty of all counts charged in the four-count information. The same judgment is filed in U.S. District Court (S.D. Fla.) in case number 0:07-cr-60209-WPB as document 59.

32. By certified letter dated January 24, 2008, Petitioner was notified of Respondent's proposed action to forfeit his FRS rights and benefits as a result of the aforesaid guilty plea. The notice set forth the basis for the Division's decision and informed Petitioner of his right to an administrative hearing.

33. Petitioner, by and through counsel, timely requested a

formal administrative hearing to challenge said proposed agency action.

[End of Stipulated Facts]

34. The parties agreed that the following exhibits would be considered in this cause:

a. Petitioner's resignation letter dated September 4, 2007;

b. Governor Crist's letter accepting Petitioner's resignation dated September 4, 2007;

c. The Information filed against Petitioner on September 4, 2007, in United States of America v. Kenneth C. Jenne, Case No. 0:07-cr-60209-WPB, United States District Court, Southern District of Florida;

d. The Plea Agreement offered in United States of America v. Kenneth C. Jenne, Case No. 0:07-cr-60209-WPB, United States District Court, Southern District of Florida;

e. The Statement of Factual Basis for Guilty Plea of Defendant Kenneth C. Jenne in United States of America v. Kenneth C. Jenne, Case No. 0:07-cr-60209-WPB, United States District Court, Southern District of Florida;

f. The Transcript of the Plea of Guilty before the Honorable William P. Dimitrouleas, U.S. District Judge, United States of America v. Kenneth C. Jenne, Case No. 0:07-cr-60209-WPB, United States District Court, Southern District of Florida;

g. The Waiver of Indictment from United States of America v. Kenneth C. Jenne, Case No. 0:07-cr-60209-WPB, United States District Court, Southern District of Florida;

h. The Judgment in a Criminal Case from United States of America v. Kenneth C. Jenne, Case No. 0:07-cr-60209-WPB, United States District Court, Southern District of Florida;

i. The Agency Action letter dated January 24, 2008;

j. Form 6 Full and Public Disclosure of Financial Interests 2001 (with attachments and amendments), Ken Jenne, Sheriff, Broward County, Elected Constitutional Officer, June 27, 2002;

k. Form 6 Full and Public Disclosure of Financial Interests 2002 (with attachments), Ken Jenne, Sheriff, Broward County, Elected Constitutional Officer, July 7, 2003; and

l. Form 6 Full and Public Disclosure of Financial Interests 2004 (with attachments), Ken Jenne, Sheriff, Broward County, Elected Constitutional Officer, July 1, 2005.

35. Petitioner did not have a trial on the merits of the charges against him. Instead, he voluntarily accepted and admitted to the factual allegations set forth in the charging and plea documents. The factual statements set forth in those documents are not subject to interpretation or conjecture. They must be considered facts of this case based upon the stipulation of the parties.

36. Petitioner was notified of the Department's preliminary decision to forfeit the FRS benefits and rights and Petitioner timely challenged that decision.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearing has jurisdiction over the parties to, and the subject matter of these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2008).

38. Chapter 121, Florida Statutes (2008), is known as the "Florida Retirement System Act." This chapter governs the general retirement system established and known in this record as the FRS.

39. The Department is responsible for administering and managing the FRS.

40. In this case, the Respondent has asserted that Petitioner through his criminal activity has forfeited his rights and benefits under the FRS. According, as the proponent of the affirmative of the issue, the Department bears the burden of proof in this matter to establish by a preponderance of the evidence that Petitioner committed a disqualifying offense such that his rights and benefits under the FRS must be forfeited. See Haines v. Department of Children and Families, 983 So. 2d 602 (Fla. 5th DCA 2008); Department of Transportation v. J.W.C. Co., 396 So.2d 778 (Fla. 1st DCA 1981) and § 120.57(1)(j), Fla. Stat. (2008).

41. Section 112.3173, Florida Statutes (2008), describes the offenses and forfeiture of retirement benefits that result when such offenses are committed. It provides:

(1) INTENT.--It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.

(2) DEFINITIONS.--As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or of nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

(b) "Court" means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.

(c) "Public officer or employee" means an officer or employee of any public body, political subdivision, or public instrumentality within the state.

(d) "Public retirement system" means any retirement system or plan to which the provisions of part VII of this chapter apply.

(e) "Specified offense" means:

1. The committing, aiding, or abetting of an embezzlement of public funds;

2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;

3. Bribery in connection with the employment of a public officer or employee;

4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;

5. The committing of an impeachable offense;

6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or

7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

(3) FORFEITURE.--Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

(4) NOTICE.--

(a) The clerk of a court in which a proceeding involving a specified offense is being conducted against a public officer or employee shall furnish notice of the proceeding to the Commission on Ethics. Such notice is sufficient if it is in the form of a copy of the indictment, information, or other document containing the charges. In addition, if a verdict of guilty is returned by a jury or by the court trying the case without a jury, or a plea of guilty or of nolo contendere is entered in the court by the public officer or employee, the clerk shall furnish a copy thereof to the Commission on Ethics.

(b) The Secretary of the Senate shall furnish to the Commission on Ethics notice of any proceeding of impeachment being conducted by the Senate. In addition, if such trial results in conviction, the Secretary of the Senate shall furnish notice of the conviction to the commission.

(c) The employer of any member whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense shall forward notice thereof to the commission.

(d) The Commission on Ethics shall forward any notice and any other document received by it pursuant to this subsection to the governing body of the public retirement system of which the public officer or employee is a member or from which the public officer or employee may be entitled to receive a benefit. When called on by the Commission on Ethics, the Department of Management Services shall assist the commission in identifying the appropriate public retirement system.

(5) FORFEITURE DETERMINATION.--

(a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to subsection (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board shall give notice and hold a hearing in accordance with chapter 120 for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board shall order such rights and privileges forfeited.

(b) Any order of forfeiture of retirement system rights and privileges is appealable to the district court of appeal.

(c) The payment of retirement benefits ordered forfeited, except payments drawn from nonemployer contributions to the retiree's account, shall be stayed pending an appeal as to a felony conviction. If such conviction is reversed, no retirement benefits shall be forfeited. If such conviction is affirmed, retirement benefits shall be forfeited as ordered in this section.

(d) If any person's rights and privileges under a public retirement system are forfeited pursuant to this section and that person has received benefits from the system in excess of his or her accumulated contributions, such person shall pay back to the system the amount of the benefits received in excess of his or her accumulated contributions. If he or she fails to pay back such amount, the official or board responsible for paying benefits pursuant to the retirement system or pension plan may

bring an action in circuit court to recover such amount, plus court costs.

(6) FORFEITURE NONEXCLUSIVE.--

(a) The forfeiture of retirement rights and privileges pursuant to this section is supplemental to any other forfeiture requirements provided by law.

(b) This section does not preclude or otherwise limit the Commission on Ethics in conducting under authority of other law an independent investigation of a complaint which it may receive against a public officer or employee involving a specified offense.

42. The foregoing law mandates the forfeiture of FRS benefits when it is determined that the employee has committed an offense within the provisions of law. Accordingly, the forfeiture is not a matter of discretion when it is determined the employee has committed a disqualifying offense.

43. Similarly, the foregoing law recognizes that federal crimes may be the basis for a forfeiture of rights and benefits under the FRS.

44. To determine whether or not a federal offense would constitute a disqualifying crime it is necessary to match the elements of the criminal acts committed by the employee with the elements of a Florida crime. If the elements of the criminal activity "match" a Florida felony, the forfeiture statute is applicable. This "matching test" is best described in Shields v. Smith, 404 So. 2d 1106 (Fla. 1st DCA 1981).

45. In Shields, supra, the employee was convicted of a federal crime that did not match to a state felony. Nevertheless, the court looked to the underlying acts in the criminal conduct to ascertain whether the acts would be matched to a felony under Florida law. In the instant case, Petitioner maintains that the public employee was not convicted of a felony under Florida law. The Shields court found at 1112 that:

[W]e find that the federal convictions included all the elements necessary to prove the Florida felony While this laborious process of matching up elements of a foreign crime with those of a Florida felony is more difficult than simply determining that under foreign law the offense was a felony, this process is more likely to ensure that disabilities are imposed only for conduct the forum considers reprehensible.

46. In this case Petitioner entered a plea based upon a series of admissions of fact related to the criminal charges. Those admissions are adequate to support findings and conclusions that would match to a felony under Florida law.

47. It is concluded that at all times material to the allegations of this case, Petitioner was a public officer. He was obligated to comport his behavior to meet the highest standard. The public may reasonably expect law enforcement officers to be law abiding.

48. Secondly, it is concluded that Petitioner was convicted of federal offenses that took place during his public employment and prior to his retirement.

49. Finally, when matched under the guidelines of Shields, the criminal conduct in which Petitioner engaged constituted a felony under Florida law. Pursuant to Section 112.3173(2)(e), Florida Statutes, the acts to which Petitioner admitted constitute a "specified offense." Petitioner received unlawful compensation and committed official misconduct. Simply stated, Petitioner abused his position and violated the public trust by using his position as sheriff for his personal financial gain. He used his relationships to receive benefits that but for his public role he would not have enjoyed or been able to exploit for financial gain to himself. The Conclusions of Law proposed by the Respondent in its assessment of the case are hereby adopted as the standard of law application to this case. The Conclusions of Law proposed by Petitioner inadequately address the applicable law because the facts of Petitioner's underlying conduct are not speculative or so obscure as to raise any question as to Petitioner's participation in the unlawful acts. The facts are unambiguously addressed in the court documents.

50. It is undisputed that Petitioner accepted unlawful payments and benefits in exchange for services. Further that his position as sheriff facilitated his conduct is also

undisputed. He failed to provide a full disclosure of the financial interests and failed to disclose information fully to investigators. All of this was part of a concerted effort to secure benefits or profit, gain or advantage for himself. It is concluded that these acts support a forfeiture of Petitioner's FRS benefits and rights. To allow Petitioner to abuse his position of trust with the citizens of the state and yet reap the contractual benefits of the FRS would defy logic and the provisions of Sections 112.3173 and 121.091, Florida Statutes (2008).

RECOMMENDATION

Based upon the Findings of Fact and the Conclusions of Law set forth above, it is

RECOMMENDED that Respondent enter a final order finding Petitioner was convicted of crimes that require the forfeiture of his rights and benefits under the FRS, pursuant to Florida law.

DONE AND ENTERED this 3rd day of March, 2009, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of March, 2009.

COPIES FURNISHED:

Sarabeth Snuggs, Director
Division of Retirement
Department of Management Services
Post Office Box 9000
Tallahassee, Florida 32315-9000

John Brenneis, General Counsel
Department of Management Services
4050 Esplanade Way
Tallahassee, Florida 32399-0950

Mark Herron, Esquire
Thomas M. Findley, Esquire
Messer, Caparello & Self, P.A.
2618 Centennial Place
Post Office Box 15579
Tallahassee, Florida 32317-5579

Clifford A. Taylor, Esquire
Barbara M. Crosier, Esquire
Geoffrey M. Christian, Esquire
Department of Management Services
4050 Esplanade Way, Suite 160D
Tallahassee, Florida 32399-0950

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.