

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FRANK PETERMAN, JR.,)
) Case No. 11-2309EC
 Respondent.)
)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 13, 2011, in Tallahassee, Florida, and on October 19, 2011, in St. Petersburg, Florida, before Susan Belyeu Kirkland, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

The Advocate: Diane L. Guillemette, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
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For Respondent: Mark Herron, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, while serving as Secretary of the Department of Juvenile Justice (DJJ), violated section 112.313(6), Florida Statutes (2007-2009),^{1/} by incurring excessive travel costs between St. Petersburg and Tallahassee, Florida, after receiving reasonable notice and

admonition from the Governor's administration that the travel was excessive.

PRELIMINARY STATEMENT

On October 8, 2010, the Florida Commission on Ethics (Commission) entered an Order Finding Probable Cause to believe that Respondent, Frank Peterman, Jr. (Mr. Peterman), as Secretary of DJJ, violated section 112.313(6). The case was forwarded to the Division of Administrative Hearings on May 9, 2011, for assignment to an Administrative Law Judge to conduct the final hearing.

The case was originally assigned to Administrative Law Judge Lisa Shearer Nelson, but was transferred to Administrative Law Judge Susan Belyeu Kirkland, formerly Susan B. Harrell.

At the final hearing, the Advocate called the following witnesses: Mary Elizabeth Grimes, William Rich, Jenna Wright, Eric Eikenberg (Mr. Eikenberg), Judge Lori Rowe (Judge Rowe), Corrine Brown (Ms. Brown), and Mr. Peterman. Advocate's Exhibits 1 through 10^{2/} were admitted in evidence.

At the final hearing, Mr. Peterman called Timothy Ben Niermann as his witness. Respondent's Exhibit 1 was admitted in evidence.

Official recognition was taken of section 112.061, Florida Statutes (2008, 2009, & 2010); sections 20.316, 20.317, 20.19, 943.03, and 20.41, Florida Statutes (2010); chapter 2009-15,

section 2, page 170, Laws of Florida; and chapter 2009-82, section 58, page 23, Laws of Florida.

The Transcript of the portion of the final hearing held on October 13, 2011, was filed on October 27, 2011. The Transcript of the portion of the final hearing held on October 19, 2011, was filed on November 3, 2011. The parties agreed to file their proposed recommended orders on or before December 7, 2011. The parties' proposed recommended orders were timely filed and have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Mr. Peterman served as the Secretary of DJJ from February 17, 2008, until January 5, 2011. Prior to his appointment as Secretary of DJJ, Mr. Peterman served as a member of the Florida House of Representatives.

2. During his appointment, Mr. Peterman maintained his primary residence in St. Petersburg, Florida, where his family resided, and he was the pastor of The Rock of Jesus Missionary Baptist Church. As pastor, Mr. Peterman was responsible for the general oversight of the church, preaching, counseling and ministering to the members of the church, and performing marriages, funerals, and other duties. In addition to his residence in St. Petersburg, Mr. Peterman maintained a separate residence in Tallahassee, Florida.

3. As Secretary of DJJ, Mr. Peterman had an office in St. Petersburg (the Wildwood office) and an office in Tallahassee (the Tallahassee office). The Tallahassee office was considered headquarters for Mr. Peterman. Ms. Brown, his assistant, worked in the Wildwood office, and her duties included setting appointments for Mr. Peterman, scheduling, and maintaining Mr. Peterman's calendar. Mr. Peterman had a staff person in Tallahassee with similar duties.

4. Mr. Peterman treated the Wildwood office as a satellite office for the Secretary of DJJ. He felt that he had the approval of the Governor's office to use such an arrangement; however, neither the Governor's Chief of Staff nor the Deputy Chief of Staff assigned to DJJ was aware of any approval by the Governor's office for a satellite. Both would have been aware if such approval had been given.

5. As Secretary of DJJ, Mr. Peterman was assigned a fleet automobile and a gas card. Mr. Peterman was responsible for filling out the travel logs, which would show the date of the trip, the destination, mileage, and fuel charges. Driving a fleet car would be cheaper than flying.

6. At the time Mr. Peterman was appointed as Secretary of DJJ, Mr. Eikenberg was the Governor's Chief of Staff. There were three Deputy Chiefs of Staff, who reported to Mr. Eikenberg. Each Deputy Chief of Staff was responsible for a

portion of the agencies that reported to the Governor. Each Deputy Chief of Staff would monitor the actions of his or her assigned agencies and report to the Chief of Staff concerning those agencies. As Deputy Chief of Staff, Judge Rowe was assigned DJJ.

7. While Judge Rowe was Deputy Chief of Staff, she counseled Mr. Peterman at least four or five times on his travel. She had concerns about his flying to St. Petersburg and the failure of his calendar to reflect a direct agency purpose on his frequent trips to St. Petersburg. Judge Rowe advised Mr. Peterman to use the most economical means of transportation when traveling to St. Petersburg, which was by automobile, and to make sure that his calendar reflected the activities in which he was engaged related to DJJ business. Mr. Peterman appeared to understand what Judge Rowe was conveying to him; however, Judge Rowe did not see any noticeable change in the pattern of his behavior. Judge Rowe left the Governor's office in August 2009.

8. Mr. Peterman appointed Bonnie Roberts (Ms. Roberts) as the Chief of Staff of DJJ. She served in that position until March 2009. As Chief of Staff of DJJ, she acted as a liaison between the Deputy Chief of Staff of the Governor's Office and DJJ. She was responsible for the administrative functions at DJJ.

9. In August 2008, Ms. Roberts along with the other senior management staff participated in a retreat in order to develop a policy for DJJ regarding restricting travel due to budgetary concerns. One of the issues discussed was that travel needed to be "mission critical."

10. On January 29, 2009, Mr. Peterman issued a memorandum to the executive leadership team of DJJ concerning mission critical travel. The memorandum provided that all travel vouchers must contain an explanation describing how the travel activity was critical to the agency's mission. It further provided:

Mission critical travel is considered necessary to perform job functions that if not conducted would have an adverse impact to the health, welfare, and safety of the youth in the Department's care and would interfere in the Department's ability to carry out its mission. Every effort must be made to ensure that travel:

- Is planned to maximize resources;
- Limits the need for overnight travel;
- Is necessary and appropriate with the needs of the position and job functions; and
- Utilizes teleconferencing and video conferencing technologies to the extent possible.

11. On February 10, 2009, Mr. Peterman sent another memorandum revising the January 29, 2009, memorandum. The new memorandum identified mission critical travel and the approval process to be used for reimbursement for travel expenses. The

new memorandum incorporated the definition of mission critical travel quoted above and also required that requests for reimbursement had to explain why the business for which the travel expense was incurred could not have been conducted by electronic means.

12. Ms. Roberts became concerned about Mr. Peterman's travel between Tallahassee and the St. Petersburg-Tampa area. She discussed the issue with Judge Rowe, who told Ms. Roberts to counsel Mr. Peterman concerning his travel, particularly his air travel between Tallahassee and the St. Petersburg-Tampa area. She talked with Mr. Peterman and reminded him that he needed to restrict his air travel and take a car when traveling to and from the St. Petersburg-Tampa area. She advised Mr. Peterman that his frequent trips to St. Petersburg were causing low morale, because other employees' travel was being restricted.

13. When Ms. Roberts resigned as Chief of Staff of DJJ, she was replaced by Kelly Layman (Ms. Layman). Ms. Roberts told Ms. Layman that Mr. Peterman's travel was an issue of concern with the Governor's office. Ms. Layman also became concerned about Mr. Peterman's frequent trips to St. Petersburg. His absences from Tallahassee were perceived by senior staff as a lack of leadership, thereby causing low morale. Ms. Layman also counseled Mr. Peterman concerning his travel to and from St. Petersburg. Mr. Peterman's mode of travel was switched

primarily to automobile, but the frequency of travel did not diminish.

14. Ms. Brown was responsible for keeping Mr. Peterman's calendar concerning his activities in the Wildwood office. The calendar reflected appointments or meetings in the St. Petersburg-Tampa area during the following days in 2008: April 24, May 23, June 6, June 13, June 27, August 7, August 14, September 18, September 25, October 17, October 30, December 4, and December 11. The calendar showed meetings and appointments in the St. Petersburg-Tampa area during the following days in 2009: January 15, January 29, February 2, February 6, February 13, March 13, March 19, March 26, May 18, June 2, August 6, August 31, September 9, September 10, September 11, September 23, September 25, September 28, October 1, October 13, October 16, November 6, November 9, November 10, November 13, November 18, December 4, December 11, and December 18.

15. The following is a summary of Mr. Peterman's state-paid travels between Tallahassee and the St. Petersburg-Tampa area during the years 2008 and 2009 based on the travel records that were admitted in evidence:

| <u>DATE</u> | <u>TRAVEL</u> ^[3/] | <u>MODE</u> | <u>PURPOSE</u> | <u>COST</u> |
|-------------|-------------------------------|-------------|------------------------|-------------|
| 2-18-08 | TP-TL | CAR R | FIRST DAY ON JOB | \$29.24 |
| 2-20-08 | TL-TP | AIR | TO JJ FOUNDATION | \$555.00 |
| 2-21-08 | TP-TL | AIR | FROM JJ FOUNDATION | |
| 2-26-08 | TP-TL | AIR | ADOLESCENCE CONFERENCE | \$245.50 |
| 2-29-08 | TL-TP | AIR | "STATE BUSINESS" | \$560.00 |

| | | | | |
|----------|-------|-------|---------------------------------------------------------------|----------|
| 3-3-08 | TP-TL | AIR | | \$560.00 |
| 3-6-08 | TL-TP | AIR | DJJ WILDWOOD OFFICE | \$248.50 |
| 3-24-08 | TL-SP | CAR | | |
| 3-27-08 | TL-SP | CAR | | |
| 3-31-08 | SP-TL | CAR | | |
| 4-23-08 | TL-TP | AIR | BLUE COMMITTEE ROLL-OUT FALKENBERG VISIT T.V. INTERVIEW | \$469.00 |
| 4-28-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 5-2-08 | TL-TP | AIR | "AIRPORT DESTINATION" | \$469.00 |
| 5-4-08 | TL-SP | CAR | | |
| 5-5-08 | SP-TL | CAR | RETURN TO HEADQUARTERS | |
| 5-12-08 | TL-SP | CAR | | |
| 5-14-08 | SP-TL | CAR | | |
| 5-14-08 | TL-TP | AIR | WORK IN DISTRICT OFFICE | \$221.50 |
| 5-19-08 | TL-SP | CAR | | |
| 5-20-08 | TL-TP | AIR | WORK IN DISTRICT OFFICE | \$234.50 |
| 5-21-08 | SP-TL | CAR | | |
| 5-27-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$234.50 |
| 6-9-08 | TP-TL | R.CAR | RETURN TO HEADQUARTERS | \$86.68 |
| 6-23-08 | TL-TP | R.CAR | RETURN TO HEADQUARTERS | \$109.09 |
| 7-30-08 | TP-TL | AIR | RETURN | \$248.50 |
| 8-7-08 | TL-TP | AIR | MEETING AT DIST OFFICE | \$269.50 |
| 8-19-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$269.50 |
| 8-22-08 | TL-TP | AIR | WORK IN WILDWOOD OFFICE | \$702.00 |
| 8-25-08 | TP-TL | AIR | RETURN TO TALLAHASSEE | |
| 8-26-08 | TL-TP | AIR | WORK IN WILDWOOD OFFICE | \$630.00 |
| 9-2-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 9-9-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$721.00 |
| 9-11-08 | TL-TP | AIR | WORK IN WILDWOOD OFFICE | |
| 9-17-08 | TL-TP | AIR | WORK IN WILDWOOD OFFICE | \$668.00 |
| 9-22-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 9-29-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$407.50 |
| 9-30-08 | TL-TP | AIR | WORK IN WILDWOOD OFFICE | |
| 10-8-08 | TL-TP | AIR | WORK IN WILDWOOD OFFICE | \$551.98 |
| 10-14-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 10-15-08 | TL-TP | AIR | WORK IN WILDWOOD | \$240.50 |
| 10-20-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$269.50 |
| 10-29-08 | TL-TP | AIR | WORK AT WILDWOOD | \$271.50 |
| 11-5-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$482.00 |
| 11-7-08 | TL-TP | AIR | WORK AT WILDWOOD | |
| 11-18-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$550.98 |
| 11-19-08 | TL-TP | AIR | WORK AT WILDWOOD | |
| 12-11-08 | TL-TP | AIR | WORK AT WILDWOOD | \$531.00 |
| 12-15-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 12-17-08 | TL-TP | AIR | WORK AT WILDWOOD | \$647.00 |
| 12-29-08 | TP-TL | AIR | RETURN TO HEADQUARTERS | |

| | | | | |
|----------|-------|-------|---------------------------|----------|
| 1-7-09 | TP-TL | AIR | WORK AT WILDWOOD | \$572.19 |
| 1-13-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 1-14-09 | TL-TP | AIR | WORK AT WILDWOOD | \$621.19 |
| 1-15-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 1-16-09 | TL-TP | AIR | WORK AT WILDWOOD | \$289.59 |
| 1-26-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$511.19 |
| 1-27-09 | TL-TP | AIR | SITE VISIT AVON PARK | \$147.00 |
| 2-3-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$237.01 |
| 2-6-09 | TP-TL | AIR | WORK AT WILDWOOD | \$200.60 |
| 2-16-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$200.59 |
| 2-20-09 | TL-TP | AIR | ATTEND CONFERNECE IN TP | \$531.19 |
| 2-24-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 3-16-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | \$266.60 |
| 3-25-09 | TL-TP | AIR | WORK IN WILDWOOD | \$481.69 |
| 3-30-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 4-16-09 | TL-TP | AIR | HDQTRS TO DISTRICT OFFICE | \$556.19 |
| 4-21-09 | TP-TL | AIR | RETURN TO HEADQUARTERS | |
| 4-24-09 | TL-TP | AIR | | \$294.60 |
| 5-1-09 | TL-TP | AIR | TL TO DISTRICT OFFICE | \$269.60 |
| 5-7-09 | SP-TL | CAR | | |
| 5-7-09 | TL-TP | AIR | TL TO DISTRICT OFFICE | \$269.60 |
| 5-12-09 | TP-TL | AIR | TO HEADQUARTERS | \$511.19 |
| 5-14-09 | TL-TP | AIR | TO DISTRICT | |
| 5-26-09 | TP-TL | CAR | TO TALLY | |
| 5-27-09 | TL-SP | CAR | | |
| 6-9-09 | SP-TL | CAR | | |
| 6-12-09 | TL-SP | CAR | | |
| 6-16-09 | SP-TL | CAR | | |
| 6-18-09 | TL-SP | CAR | | |
| 6-24-09 | SP-TL | CAR | | |
| 7-2-09 | TL-SP | CAR | | |
| 7-7-09 | SP-TL | CAR | | |
| 7-28-09 | TP-TL | AIR | | \$286.60 |
| 7-30-09 | TL-TP | AIR | | \$266.60 |
| 8-10-09 | TP-TL | CAR | | |
| 8-14-09 | TL-TP | CAR | | |
| 8-21-09 | TL-TP | AIR | | \$269.60 |
| 9-1-09 | SP-TL | CAR | | |
| 9-3-09 | TL-SP | CAR | | |
| 9-21-09 | TP-TL | AIR | | \$439.19 |
| 9-29-09 | SP-TL | CAR | | |
| 9-30-09 | TL-SP | CAR | | |
| 10-6-09 | SP-TL | CAR R | HOME TO HEADQUARTERS | |
| 10-7-09 | TL-SP | CAR | HOME TO DISTRICT OFFICE | |
| 10-14-09 | TP-TL | AIR | | \$295.60 |
| 10-15-09 | TL-TP | AIR | | \$269.60 |
| 10-23-09 | TL-SP | CAR | | |

| | | | |
|----------|-------|-----|--------------------------|
| 11-18-09 | TP-TL | AIR | \$511.20 ^[4/] |
| 11-19-09 | TL-TP | AIR | |
| 11-23-09 | SP-TL | CAR | |
| 12-1-09 | SP-TL | CAR | |
| 12-3-09 | TL-SP | CAR | |
| 12-8-09 | SP-TL | CAR | |
| 12-10-09 | TL-SP | CAR | |
| 12-15-09 | SP-TL | CAR | |
| 12-17-09 | TL-SP | CAR | |
| 12-29-09 | SP-TL | CAR | |

16. For the months of February through April 2008, July through December 2008, and January through April 2009, there are gaps in the daily vehicle usage log so that the purpose of all the trips taken cannot be ascertained from the records. Based on the mileage that was recorded, some of the trips were not local trips. In some months, there is no mileage recorded except at the beginning and the end of the month, but the difference in the mileage shows that travel did occur in that month.

17. Because of the poor record keeping, the travel records do not account for some travel; yet, there had to have been travel between Tallahassee and the St. Petersburg-Tampa area. For instance, Mr. Peterman's records show a trip from Tampa to Tallahassee on February 24, 2009, and the next trip does not occur until March 7, 2009, when he traveled from Tampa to Miami. There is no explanation of how he got to Tampa from Tallahassee. In March 2008, his records show that he traveled from Tallahassee to Tampa by air on March 6, from Tallahassee to

St. Petersburg by car on March 24, and from Tallahassee to St. Petersburg by car on March 27. Because of the gaps in the car travel records, it is impossible to tell how he got to Tallahassee after his March 6 travel to Tampa and his March 24 travel to St. Petersburg.

18. On February 29, 2008, a Friday, Mr. Peterman traveled from Tallahassee to Tampa, arriving in Tampa after 5:00 p.m. He traveled back to Tallahassee on Monday, March 3, 2008, arriving at 7:55 a.m. The airfare was \$560.00. The stated purpose was "State Business," with no further elaboration. There was nothing on Mr. Peterman's calendar that showed state business was being conducted. Since Mr. Peterman arrived after the close of business on Friday and returned before the beginning of the business day on Monday, the trip was not for state business and was for the purpose of Mr. Peterman returning to his primary residence.

19. On Friday, May 2, 2008, Mr. Peterman flew from Tallahassee to Tampa, arriving at 7:25 p.m. The purpose of the trip was designated as "Airport Destination." The vehicle travel log shows that he traveled by car from Tallahassee to St. Petersburg on Sunday, May 4, 2008. On Monday, May 5, 2008, he flew back to Tallahassee, leaving at 10:25 a.m. and arriving at 11:20 a.m. The cost of the round-trip ticket was \$469.00, and the cost of parking was \$36.00. On his voucher for

reimbursement, Mr. Peterman stated that he worked in the St. Petersburg office. Given the time that it would take to get from St. Petersburg to Tampa to catch a 10:25 a.m. flight, there would be no time to work in the Wildwood office, and the calendar showed no work. It is not understandable why the travel records also show a car trip to St. Petersburg on May 4, 2008, but whether Mr. Peterman went by airplane or automobile, the trip was not for state business and was for the purpose of Mr. Peterman returning to his primary residence.

20. On Friday, August 22, 2008, Mr. Peterman flew from Tallahassee to Tampa, arriving at 3:50 p.m. The cost of the airline ticket was \$702.00, and the cost of parking was \$36.00. On Monday, August 25, 2008, Mr. Peterman flew back to Tallahassee, arriving at 12:12 a.m. His calendar did not reflect that he did any business at the Wildwood office from August 22 to 25, 2008. The purpose of the trip was to return to his primary residence. On August 26, 2008, Mr. Peterman returned to Tampa, arriving at 3:50 p.m. He stated in his travel voucher request that the purpose was to work in the Wildwood office. His calendar did not reflect any work performed in St. Petersburg on August 26, 2008.

21. On January 13, 2009, Mr. Peterman flew from Tampa to Tallahassee, and flew back from Tallahassee to Tampa on January 14, 2009. The following day, January 15, 2009,

Mr. Peterman flew from Tampa to Tallahassee and returned to Tampa by air on January 16, 2009. His calendar showed that he had two appointments at the Wildwood office on January 15, 2009.

22. On March 28, 2009, a Saturday, Mr. Peterman flew from Miami to Tampa rather than to Tallahassee. He took a 7:00 a.m. flight on Monday, March 30, 2009, to Tallahassee. The trip to Tampa from Miami was to return to his primary residence as evidenced by his early morning flight to Tallahassee on March 30, 2009. Thus, the flight to Tallahassee would not have been incurred except for his desire to spend the weekend at his St. Petersburg home.

23. On Saturday, September 19, 2009, Mr. Peterman, flew from Miami to Tampa, rather than fly to Tallahassee. On Monday, September 21, 2009, Mr. Peterman took a 10:05 a.m. flight to Tallahassee, and returned to Tampa on a 6:15 a.m. flight. It can only be concluded that Mr. Peterman flew to Tampa on September 19, 2009, in order to return to his primary residence and not for state business based on his morning flight to Tallahassee on September 21, 2009. Thus, the cost of the flight to Tallahassee would not have been incurred except for his desire to spend the weekend at his St. Petersburg home.

24. Mr. Peterman claimed that while he was at the Wildwood office that he met with children and parents of children concerning the care provided by DJJ, met with staff in the

various facilities in the middle region of Florida, and talked with persons waiting in the lobby of his office. However, Mr. Peterman's calendar does not account for a large amount of the time that he purportedly spent at the Wildwood office, and his testimony was vague, characterized by generalities rather than in specifics. The evidence established that Mr. Peterman made a concerted effort to make sure that he spent his weekends in St. Petersburg where he had his primary residence and was pastor of a church.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 & 120.57, Fla. Stat. (2011).

26. The Advocate has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997).

27. In Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983), the court developed a working definition of "clear and convincing evidence," which has been adopted by the Florida Supreme Court in In re Davey, 645 So. 2d 398 (Fla. 1994). The court in Slomowitz 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.

Slomowitz, 429 So. 2d at 800.

28. The Advocate has alleged that Mr. Peterman violated section 112.313(6), which 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.

29. The term "corruptly" is defined in section 112.312(6) 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.

30. The Advocate has established by clear and convincing evidence that Mr. Peterman violated section 112.313(6). As

Secretary of DJJ, Mr. Peterman was a public officer.

Mr. Peterman used his position as Secretary of DJJ to travel to his primary residence at state expense when there was no state purpose for the travel.

31. Such action is inconsistent with his duties as Secretary of DJJ. He was advised by Judge Rowe, Ms. Roberts, and Ms. Layman to cut back on his travel and to at least travel by car rather than airplane when going to St. Petersburg. Mr. Peterman sent out memoranda to his Executive Leadership team advising that travel needed to be restricted because of budgetary constraints; however, he continued to travel to St. Petersburg by air and, in some instances, for no other reason than to be home on the weekends. Such actions show that he corruptly used his position to get home at state expense.

32. Mr. Peterman's travel between Tallahassee and St. Petersburg during 2008 and 2009 was excessive. Mr. Peterman's travel records do not support a state-business need for the amount of time that Mr. Peterman spent in St. Petersburg. It can only be concluded that the majority of the travel to St. Petersburg was to assure that Mr. Peterman spent his weekends in St. Petersburg with his family and to pastor at his church. While it is commendable that Mr. Peterman wanted to spend time with his family and church, it should not have been done with taxpayer dollars.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Ethics enter a final order and public report finding that Mr. Peterman violated section 112.313(6) and recommending a civil penalty of \$5,000.00 together with a public censure and reprimand.

DONE AND ENTERED this 30th day of December, 2011, in Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of December, 2011.

ENDNOTES

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2009 version.

^{2/} Two of the Advocate's exhibits were entered as Advocate's Exhibit 9.

^{3/} Respondent traveled to and from the following cities: Tallahassee (TL), Tampa (TP), and St. Pete (SP). "R" means rental.

^{4/} Mr. Peterman apparently reimbursed DJJ for \$483.20 for this trip.

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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.