

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: STEVEN J. MUELLER,) Case No. 12-3138EC
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this case was heard in St. Petersburg, Florida, on November 15, 2012, before J. D. Parrish, an Administrative Law with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Melody A. Hadley, Esquire
Office of the Attorney General
The Capitol, Plaza Level One
Tallahassee, Florida 32399-1050

For Respondent: Steven J. Mueller, pro se
51 Freshwater Drive
Palm Harbor, Florida 34684

STATEMENT OF THE ISSUES

Whether Respondent, Steven J. Mueller (Respondent), violated Florida law by filing an inaccurate Public Disclosure of Financial Interests form and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On February 9, 2011, the Florida Commission on Ethics (the Commission) issued an Order Finding Probable Cause against Respondent that determined he had filed an inaccurate or

incomplete form that failed to disclose his liabilities, assets, net worth, and a \$20,000.00 loan. As a result of the finding reached by the Commission, it ordered a public hearing be held to address whether Respondent violated Florida law. On September 19, 2012, the case was forwarded to DOAH for formal proceedings.

At the hearing, the Commission through the Advocate presented testimony from Respondent and A. Keith Powell, an investigator with the Commission. Two exhibits, marked for identification as Advocate's Exhibits 1 and 2, were admitted into evidence for the Commission. Respondent offered Respondent's Exhibits 1 and 2 which were also admitted into evidence.

The Transcript of the proceedings was filed with DOAH on November 30, 2012. The parties were granted ten days from that date within which to file a proposed order. The Advocate timely filed a Proposed Recommended Order which has been considered in the preparation of this Recommended Order. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

The Parties

1. The Commission is the state entity charged with the responsibility of administering, maintaining records, reviewing

complaints, and disciplining violations of Florida law pertaining to Article II, Section 8, Florida Constitution.

2. As a former candidate for public office, Respondent was subject to the requirements of Florida law pertaining to the disclosure of financial interests as set forth in Article II, Section 8, Florida Constitution.

3. More specifically, Respondent was a candidate for the Florida House of Representatives, District 48, in the 2010 election. As such, Respondent was obligated to file a 2009 CE Form 6, "Full and Public Disclosure of Financial Interests (Form 6)."

The Form

4. Form 6 requires a candidate to list assets, liabilities, and net worth. Explicit in the form is the requirement that the information provided in Form 6 be accurate and complete. Page 2 of Form 6 requires that the document be submitted under oath.

5. Respondent completed Form 6 on June 7, 2010. Respondent represented his net worth (Part A, Form 6) as of June 7, 2010, to be \$500,000.00.

6. Respondent represented the aggregate value of his household goods and personal effects to be \$100,000.00 (Part B, Form 6).

7. Respondent listed individual assets valued at over \$1,000.00 as: a Binelli 12-gauge shotgun; a Hitachi television; a sofa; a Ford F150; and a Buick LeSabre (Part B, Form 6).

8. Under Part C, Form 6, Respondent listed his liabilities in the amount of \$90,384.00 owed to Morgan Stanley.

The Inaccuracies

9. With regard to assets, Respondent failed to list: his home; a Porsche Boxter automobile; a Sea Ray boat, a Ski Nautique boat; a bank account valued at \$4,691.18, and a \$20,000.00 loan made to his campaign.

10. With regard to the disclosure of his liabilities, Respondent did not list an address (as required by Form 6) for his creditor, Morgan Stanley.

The Complaint

11. On or about July 30, 2010, a complainant filed a complaint against Respondent alleging inaccuracies in Respondent's Form 6. On August 11, 2010, the complaint was deemed sufficient for investigation purposes.

12. During the course of the investigation, Respondent was afforded the opportunity to file an amended Form 6 to clarify any omissions or inaccuracies that may have been included in the original form. He did not accept the offer.

13. After the investigation was completed, the Advocate recommended that probable cause be found in this matter. The Commission made that recommendation on February 9, 2011.

14. As of the date of the formal hearing, Respondent did not wish to change or amend Form 6.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2012).

16. The Commission is authorized to conduct investigations and to make public reports on complaints concerning violations of law pertaining to ethics for public officers and employees. See § 112.322, Fla. Stat. (2012).

17. In this case, the Commission, through the Advocate, bears the burden of proof to establish by clear and convincing evidence Respondent violated Florida law in the submission of his Form 6. See Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83(Fla. 1st DCA 1997).

18. Article II, Section 8, Florida Constitution, provides, in pertinent part:

SECTION 8 Ethics in government.--A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:
(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full

and public disclosure of their financial interests.

* * *

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

(g) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(h) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(i) Schedule—On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value . . .

* * *

(3) The independent commission provided for in subsection (f) shall mean the Florida Commission on Ethics.

19. Section 112.3144, Florida Statutes (2010), provides,
in part:

Full and public disclosure of financial interests.

(1) An officer who is required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year shall file that disclosure with the Florida Commission on Ethics.

* * *

(3) For purposes of full and public disclosure under s. 8(a), Art. II of the State Constitution, the following items, if not held for investment purposes and if valued at over \$1,000 in the aggregate, may be reported in a lump sum and identified as "household goods and personal effects":

- (a) Jewelry;
- (b) Collections of stamps, guns, and numismatic properties;
- (c) Art objects;
- (d) Household equipment and furnishings;
- (e) Clothing;
- (f) Other household items; and
- (g) Vehicles for personal use.

(4)(a) With respect to reporting, on forms prescribed under this section, assets valued in excess of \$1,000 which the reporting individual holds jointly with another person, the amount reported shall be based on the reporting individual's legal percentage of ownership in the property. However, assets that are held jointly, with right of survivorship, must be reported at 100 percent of the value of the asset. For purposes of this subsection, a reporting individual is deemed to own a percentage of a partnership which is equal to the reporting individual's interest in the capital or equity of the partnership.

(b)1. With respect to reporting liabilities valued in excess of \$1,000 on forms prescribed under this section for which the reporting individual is jointly and severally liable, the amount reported shall be based on the reporting individual's percentage of liability rather than the total amount of the liability. However, liability for a debt that is secured by property owned by the reporting individual but that is held jointly, with right of survivorship, must be reported at 100 percent of the total amount owed.

2. A separate section of the form shall be created to provide for the reporting of the amounts of joint and several liability of the reporting individual not otherwise reported in subparagraph 1.

(5) Forms for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be created by the Commission on Ethics.

* * *

(e) Any person who is required to file full and public disclosure of financial interests and whose name is on the commission's mailing list but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however this \$1,500 limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and the procedures by which each person whose name is on the mailing list and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. The rule must provide for and make specific the following:

1. The amount of the fine due is based upon the earliest of the following:

a. When a statement is actually received by the office.

b. When the statement is postmarked.

c. When the certificate of mailing is dated.

d. When the receipt from an established courier company is dated.

2. Upon receipt of the disclosure statement or upon accrual of the maximum penalty, whichever occurs first, the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an explanation of the appeal procedure under subparagraph 3. Such fine must be paid within 30 days after the notice of payment due is transmitted, unless appeal is made to the commission pursuant to subparagraph 3. The moneys shall be deposited into the General Revenue Fund.

3. Any reporting person may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the commission, which may waive the fine in whole or in part for good cause shown. Any such request must be made within 30 days after the notice of payment due is transmitted. In such a case, the reporting person must, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission.

* * *

(h) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final

order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such fine to a collection agent as provided in s. 17.20.

* * *

(7) The commission shall adopt rules and forms specifying how a person who is required to file full and public disclosure of financial interests may amend his or her disclosure statement to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

20. In this case, the Commission, through the Advocate, has established by clear and convincing evidence that Respondent did not complete Form 6 accurately. The omission of assets valued at more than \$1,000.00, the omission of the address for Morgan Stanley, and the failure to disclose a bank account sufficient to loan \$20,000.00, all point to a casual indifference to the financial disclosure requirements of Florida law. Among assets not disclosed was Respondent's home. It is reasonable to conclude the home's value exceeds \$1,000.00. By

Respondent's admission the Porsche, Sea Ray boat, and Correct Craft boat all individually exceed \$1,000.00 in value. Respondent's failure to correctly complete Form 6 or to amend it when provided the opportunity constitute violations of Article II, Section 8, Florida Constitution.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commission enter a Final Order and Public Report determining that Respondent violated Article II, Section 8, Florida Constitution, and imposing a fine in the amount of \$1,500.00.

DONE AND ENTERED this 24th day of January, 2013, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of January, 2013.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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