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"A Public Office is a Public Trust"

April 26, 2017

The Honorable Rick Scott
Governor, State of Florida
The Capitol, 400 S. Monroe St.
Tallahassee, Florida 32399-0001

Re: Complaint No. 14-167, In re ROBERT K. ROBINSON

Dear Governor Scott:

The Florida Commission on Ethics has completed a full and final investigation of a complaint filed against Robert K. Robinson, former City Attorney for the City of North Port. Pursuant to Section 112.324(8)(d), Florida Statutes, we are reporting our findings and recommending appropriate disciplinary action to you in this case.

Enclosed are copies of our final order and of our file in this matter. As we have found, pursuant to a Recommended Order by an Administrative Law Judge of the Division of Administrative Hearings, that Mr. Robinson violated the Code of Ethics in the manner described by our order, we recommend that you publicly censure and reprimand him and impose upon him a civil penalty in the amount of \$5,000 per violation (\$10,000 total). If we may be of any assistance to you in your deliberations, please do not hesitate to contact us. We would appreciate your informing us of the manner in which you dispose of this matter. For information regarding collection of the civil penalty, please contact Assistant Attorney General Elizabeth A. Miller in the Office of the Attorney General.

Sincerely,

A handwritten signature in cursive script, appearing to read "Virlindia Doss".

Virlindia Doss
Executive Director

VAD/cmk
Enclosures

cc: Mr. Mark Herron, Attorney for Respondent
Mr. Brennan Donnelly, Attorney for Respondent
Mrs. Elizabeth A. Miller, Commission Advocate
Ms. Conni Brunni, Complainant

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re ROBERT K. ROBINSON,)
)
 Respondent.)
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Complaint No. 14-167
DOAH Case No. 16-1007EC

Final Order No. 17-024

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on April 21, 2017, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on January 31, 2017.

Background

This matter began with the filing in 2014 of an ethics complaint by Conni Bruni ("Complainant") against Robert K. Robinson ("Respondent"). By an order dated November 4, 2014, the Commission on Ethics' Executive Director determined that the complaint was legally sufficient to indicate possible violation of the Code of Ethics and ordered Commission staff to investigate the complaint, resulting in a Report of Investigation dated July 10, 2015.

By order rendered September 16, 2015, the Commission found probable cause to believe the Respondent violated Sections 112.313(3), 112.313(6), 112.313(7)(a), and 112.313(16), Florida Statutes, by providing counsel and recommendations to the City Commission regarding the adoption of local Ordinance 2014-29—requiring the appointment of a Zoning Hearing Officer—and encouraging the City Commission to amend Part II, Chapter 2, Article IX, of the City Code to replace the Code Enforcement Board with a Code Enforcement Special Magistrate and offering

himself for consideration for the position of Zoning Hearing Officer as well as Code Enforcement Special Magistrate.

The matter was forwarded to DOAH for assignment of an ALJ to conduct a formal hearing and prepare a recommended order. The Respondent and the Advocate filed a joint prehearing stipulation on August 17, 2016. A formal hearing was held before the ALJ on August 25-26, 2016. The Advocate and Respondent filed proposed recommended orders with the ALJ.

On January 31, 2017, the ALJ entered his RO finding that Respondent violated Sections 112.313(6) and 112.313(16)(c), Florida Statutes, and recommending a penalty of \$5,000 per violation (\$10,000 total) against the Respondent.

On February 14, 2017, the Advocate timely submitted to the Commission her exceptions to the RO. On February 15, 2017, the Respondent timely submitted to the Commission his exceptions to the RO. On February 24, 2017, the Advocate submitted to the Commission her response to Respondent's exceptions to the RO. On February 24, 2017, the Respondent submitted to the Commission his response to the Advocate's exceptions to the RO. Both the Respondent and the Advocate were notified of the date, time, and place of the Commission's final consideration of this matter; and both were given the opportunity to make argument during the Commission's consideration.

Standards of Review

The agency may not reject or modify findings of fact made by an ALJ unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. See, e.g., Freeze v. Department of Business Regulation, 556 So. 2d 1204 (Fla. 5th DCA 1990), and Florida Department of Corrections v. Bradley, 510 So. 2d 1122 (Fla. 1st

DCA 1987). "Competent, substantial evidence" has been defined by the Florida Supreme Court as such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusions reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

The agency may not reweigh the evidence, may not resolve conflicts in the evidence, and may not judge the credibility of witnesses, because such evidential matters are within the sole province of the ALJ. Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Consequently, if the record of the DOAH proceedings discloses any competent, substantial evidence to support a finding of fact made by the ALJ, the Commission on Ethics is bound by that finding.

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion or interpretation and must make a finding that its substituted conclusion or interpretation is as or more reasonable than that which was rejected or modified.

An agency may accept a hearing officer's findings of fact and conclusions of law, yet still reject the recommended penalty and substitute an increased or decreased recommended penalty. Criminal Justice Standards and Training Comm'n v. Bradley, 596 So. 2d 661, 664 (Fla. 1992). Under Section 120.57(1)(l), Florida Statutes, an agency may reduce or increase the recommended penalty only upon a review of the complete record, stating with particularity the agency's reasons

for reducing or increasing the recommended penalty, and citing to the record in support of its action.

Having reviewed the RO and the complete record of the proceeding and the Advocate's and the Respondent's exceptions and having heard the arguments of the Advocate and the Respondent, the Commission on Ethics makes the following rulings, findings, conclusions, recommendation, and disposition:

Ruling on Respondent's Exceptions

Respondent timely filed nine exceptions. Each will be treated below via numbering corresponding to that in the exceptions.

1. In his first exception, Respondent takes issue with the second sentence of paragraph 22, pages 9-10 of the RO, which provides:

22. Unlike the contract with Ms. D'Agresta, which was signed by City Manager Lewis, Respondent's Agreement was signed by then-City Commission Chair Tom Jones. This indicates that Respondent or his firm was a Charter officer serving under the City Commission, and not a non-charter independent contractor serving under the City Manager on a temporary basis when Respondent and his firm recused themselves from any involvement with the RFP since they intended to submit a proposal.

(Emphasis added)

More particularly, Respondent argues that there is no competent, substantial evidence in the record to support the findings of fact that there is any significance on the status of the Respondent as a "Charter officer serving under the City Commission" or a "non-charter independent contractor serving under the City Manager" arising from the fact of who signed the Respondent's contract for legal services. Contrary to the Findings of Fact, paragraph 22, the Respondent argues that the record evidence indicates that the fact that the contract for legal services was signed by the then-City Commissioner Tom Jones was of no consequence. Thus, Respondent requests that because

there is no competent, substantial evidence in the record to support the second sentence of paragraph 22, it should be deleted in its entirety.

This exception is rejected. The language of paragraph 22 excepted to is supported by competent, substantial evidence, including the Respondent's testimony regarding the negotiations for the City Attorney position with the City Commission's outside attorney (Tr. pp. 30-31, 56), the deliberation of the agreement as an item on the City Commission's agenda for its approval (Tr. pp. 40, 60), the Respondent's retention by majority vote of the City Commission (Tr. p. 40), Respondent's client being the City of North Port, which is represented by five commissioners (Tr. p. 30), Respondent's own testimony that he was accountable to the City Commission—not the City Manager (Tr. p. 57), and the executed agreement for the retention of the Respondent signed by the then-City Commissioner Tom Jones (Adv. Exh. 5); and the proceedings before the ALJ complied with essential requirements of law.

2. In his second exception, Respondent takes issue with paragraph 35, page 14 of the RO, which provides:

35. Other options may have been available since it was "the norm" (Respondent's words) for City Manager Lewis to contract with attorneys from a variety of law firms for services without undertaking the competitive solicitation process when specialty legal services were needed. Respondent himself could have called an experienced attorney to handle the pending petition. Instead, Respondent informed the City Commission it was not his responsibility to provide other options to the City Commission.

Respondent argues that there is no competent, substantial evidence in the record to support a finding of fact that Respondent "informed the City Commission it was not his responsibility to provide other options to the City Commission" and therefore the last sentence of paragraph 35 should be deleted in its entirety. In support of this position, Respondent highlights portions of testimony wherein the Respondent acknowledges that he could have recommended other

experienced attorneys to handle the pending petition, which potentially involved the threat of litigation.

Respondent's second exception is rejected. Paragraph 35 is based on proceedings which complied with essential requirements of law and is based on competent, substantial evidence including hearing testimony and the transcript of the July 28, 2014, City Commission meeting wherein the second reading of Ordinance 2014-29 took place, and was incorporated into the record. (Tr. pp. 181-199) The transcript of the July 28, 2014, City Commission meeting shows that the Respondent advised the Commission of its need to appoint a hearing officer (Tr. 182), offered his services to act as hearing officer (Tr. 182-183), suggested that an appointment had to be made that night (Tr. 183), and further advised the Commission that he was "uniquely qualified" for the position, therefore, no one else needed to be considered in his opinion. (Tr. pp. 308-309) The testimony and evidence in the record supports the ALJ's characterization in this factual finding.

3. In his third exception, Respondent takes issue with paragraph 58, page 20 of the RO, which provides:

58. It is significant that the 2012 Agreement for Legal Services was signed by Tom Jones, then-Chair of the City Commission. The City Manager did not sign the document as he would have if this contract and the legal services rendered thereunder fell into the category of non-charter personnel performing legal (or other) services for the City. Only the City Commission can appropriately sign an agreement or contract designating a Charter Officer such as City Attorney.

The Respondent argues that the record evidence indicates that the fact that the contract for legal services was signed by the then-City Commissioner Tom Jones was of no legal consequence. He states that under the City Charter, there is no authorization for members of the City Commission to sign contracts and there is no distinction between contracts for legal services provided by charter personnel or "non-charter personnel." Therefore, Respondent suggests that because there is no

competent, substantial evidence in the record to support paragraph 58, it should be deleted in its entirety.

The Advocate responds that this exception is merely an expansion of the arguments raised in Respondent's first exception. Moreover, she asserts that exception three consists primarily of legal argument regarding application of contract law and requires the Commission on Ethics to interpret the legal effect of the contract's signatories. Therefore, the Advocate argues that exception three must be denied because paragraph 58 is supported by competent, substantial evidence in the record.

This exception is rejected. Paragraph 58 is supported by competent, substantial evidence, including the Respondent's testimony regarding the negotiations for the City Attorney position with the City Commission's outside attorney (Tr. pp. 30-32, 56), the deliberation of the agreement as an item on the City Commission's agenda for its approval (Tr. pp. 40, 60), the Respondent's retention by majority vote of the City Commission (Tr. p. 40), evidence that Respondent's client is the City of North Port, which is represented by five commissioners (Tr. p. 30), Respondent's own testimony that he was accountable to the City Commission-not the City Manager (Tr. p. 57), and the executed agreement for the retention of the Respondent signed by the then-City Commissioner Tom Jones (Adv. Exh. 5); and finds that the proceedings before the ALJ complied with essential requirements of law.

4. In his fourth exception, Respondent takes issue with paragraph 73, page 27 of the RO, which provides:

73. A violation of section 112.313(3), can be established by proof that Respondent provided counsel and recommendations to the City Commission, as alleged in the Order Finding Probable Cause, regarding the adoption of local Ordinance 2014-29 requiring the appointment of a Zoning Hearing Officer and encouraging the City Commission to amend Part II, Chapter 2, Article IX, of the City Code to replace the Code Enforcement Board with a Code Enforcement

Special Magistrate and by offering himself for consideration for the position of Zoning Hearing Officer, as well as Special Magistrate. The Order Finding Probable Cause, on its face, alleges a violation of section 112.313(3).

The Respondent argues that paragraph 73 should be deleted in its entirety because it is an erroneous conclusion, as a matter of law. In support of this position, the Respondent argues that Section 112.313(3) requires that one accused of violating this provision must have either directly or indirectly purchased, rented, or leased some realty, goods, or services for his or her agency; and such purchase, rental or lease must have been for his or her own agency; and such purchase, rental, lease must have been from a business entity of which the public officer or employee, his or her spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Or alternatively, the statute requires that one accused of violating Section 112.313(3) acting in a private capacity, must have rented, leased, or sold realty, goods, or services to his or her own agency, if the public officer or employee was a state officer or employee, or to his or her political subdivision or any agency thereof, if the public officer or employee was serving as an officer or employee of that political subdivision.

In light of the requirements of this provision, the Respondent contends, no violation of Section 112.313(3), Florida Statutes, can be established by proof that the Respondent merely provided counsel and recommendations to the City Commission and offered himself for consideration for the positions of Zoning Hearing Officer and Code Enforcement Special Magistrate.

The Advocate argues that the Respondent's exception's interpretation of the facts, law, and issues runs afoul of both the ALJ's and the Commission on Ethics' understanding of Section 112.313(3), Florida Statutes. In support of this assertion, the Advocate cites to the detailed

Findings of Fact contained in RO paragraphs 32, 33, 34, 35, 36, 37, 42, 43, and 44. The Advocate further states that legal advice, recommendations, and legal representation are "services" and that both the Respondent's 2012 contract and the Charter expressly state that the Respondent would provide those services to the City Commission (Adv. Exhs. 1, 5) Moreover, the Advocate contends that, as City Attorney, Respondent "directly or indirectly" compelled the Commission to "purchase" his services when he offered himself to the City Commission as its only option for the appointment to the positions of Zoning Hearing Officer and Special Magistrate. Citing to Howard v. State Commission on Ethics, 421 So. 2d 37 (Fla. 3d DCA 1982), the Advocate alternatively argues that while acting in his private capacity, Respondent "sold" his services to the City Commission when he recommended to the Commission that they appoint him to both positions.

This exception is rejected. The Commission on Ethics' ability to reject the ALJ's Conclusions of Law is limited by the requirements of Section 120.57(1)(l), Florida Statutes, which provides in relevant part:

The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction When rejecting or modifying such conclusion of law . . . the agency must state with particularity its reasons for rejecting or modifying such conclusion of law . . . and must make a finding that its substituted conclusion . . . is as or more reasonable than that which was rejected or modified.

Thus, in order to reject any conclusions of law the area must be an area over which the agency has substantive jurisdiction to interpret *and* substituted conclusions must be as or more reasonable as those of the ALJ.

Paragraph 73 is predicated upon the ALJ's review of testimony and evidence in determining the Findings of Fact contained in paragraphs 32, 33, 34, 35, 36, 37, 42, 43, and 44, that are founded upon competent, substantial evidence, and his determination that the Respondent deviated from

his ethical obligations. In light of the record in this matter, the Commission on Ethics is not persuaded that the Respondent's conclusion is "as or more reasonable than that" of the ALJ in this matter.

5. In his fifth exception, Respondent takes issue with paragraph 81, page 32 of the RO, which provides:

81. Except for his involvement in the development of the two ordinances relating to the Zoning Hearing Officer and Special Magistrate, nothing in the record suggests that Respondent ever provided less than exemplary legal services to the City. Based upon his years of service to the City and based upon the fact that Respondent generally had the majority of the Commissioners on his side when he made recommendations for action to be taken, Respondent's recommendation with respect to the City Commission hiring him as both the Zoning Hearing Officer and the Special Magistrate put him in an advantageous position with respect to securing those two contracts. Except by Commissioner Yates who appeared to be generally critical of Respondent, Respondent was a trusted and presumably well-respected City Attorney or attorney for the City. A prudent action for Respondent to have taken when the two ordinances came before the City Commission would have been to inform the City Commission that it should contract with an outside attorney to handle the discussions and, ultimately, negotiations that led to Respondent securing both positions. Even more prudent would have been a suggestion by Respondent that the City Commission engage the services of this outside attorney throughout the development of the two positions described by the ordinances once he knew he intended to apply for one or both of them. Had the City Commission voted not to engage outside services, even with the knowledge Respondent would be applying for one or both of the positions, Respondent would have covered himself by avoiding any conflict or appearance of impropriety through full and open disclosure. By proceeding with the ordinances at the meetings while he was still under contract as the City Attorney, Respondent left the clear impression that he had a personal pecuniary interest in the outcome of the vote on the two ordinances. By offering his services at the 11th hour as the best qualified candidate for the Zoning Hearing Officer position, the obvious conclusion an outsider to the process would make is that Respondent created an unfair advantage for himself and his firm. The Respondent argues that in order to establish a violation of Section 112.313(6), Florida Statutes, the Commission was required to establish by clear and convincing evidence that the Respondent as a "local government attorney" (1) used or attempted to use his official position; (2) to secure a special privilege, benefit, or exemption for himself or another and (3) acted "corruptly" in doing so, that is, with wrongful intent and for the purpose of benefitting himself or another person from some act or omission which is inconsistent with the proper performance of his public duties. Quoting Siplin v. Commission on Ethics, 59 So. 3d 150, 151 (Fla. 5th DCA 2011), Respondent further argues that to satisfy the statutory elements of

Section 112.313(6) proof must be adduced that a respondent acted with reasonable notice that his or her conduct was inconsistent with the proper performance of his or her public duties or would be a violation of the law or the Code of Ethics. Respondent states that there is no evidence in the record that the Respondent acted with reasonable notice that his conduct was inconsistent with the proper performance of his or her public duties. Rather, Conclusion of Law 81 focuses on the "special privilege or benefit" element of a potential violation of Section 112.313(6) and ignores the "corrupt intent" element of the statute.

Respondent argues that Section 112.313(16)(b), Florida Statutes, provides a statutory right to refer business to his law firm. The Respondent argues that the record is devoid of any evidence that the Respondent acted "with reasonable notice that his conduct was inconsistent with the proper performance of his public duties," and is replete with evidence that his service for the City Commission was otherwise exemplary, and because he had the statutory ability and contract right to refer business to his law firm. Accordingly, the Respondent argues that the Commission should add an additional sentence to paragraph 81, to read as follows:

It cannot be concluded that Respondent acted "corruptly;" he had a statutory ability and a contract right to refer business to his law firm.

In response the Advocate argues that Section 112.313(6) prohibits a public officer or local government attorney from using his official position in a corrupt manner to bring about any "special privilege, benefit, or exemptions for" the officer, local government attorney, or another and that direct evidence of wrongful intent is often unavailable. Thus, the Advocate contends that numerous courts and this Commission have opined that circumstantial evidence, such as the public servant's actions, may be relied upon to prove wrongful intent which must be shown to establish a violation of Section 112.313(6), Florida Statutes.

And the Advocate also argues that the ALJ set forth with specificity the elements necessary to establish a violation of Section 112.313(6) including the definition of "corruptly." (RO pp. 28-

30, paragraphs 75, 76) Moreover, the Advocate states that there is ample evidence and testimony in the record that supports the ALJ's determination with respect to the presence of each element, including the "corrupt intent."

Moreover, the Advocate argues that in 2012 the Respondent was serving as City Attorney when the City Commission issued a Request for Proposal seeking qualified applicants for the City Attorney position. (RO pp. 6-7) The Advocate argues that at that time the Respondent removed himself from the process as he intended to submit a proposal. (RO p. 7) The Advocate states that the Respondent even suggested another attorney to advise the City Commission during the pendency of the RFP discussions, thereby appropriately avoiding a conflict of interest. Thus, the Advocate argues that the Respondent acknowledged his awareness of potential ethical problems when seeking employment with the agency with which he was employed in 2012. Yet, two years later, the Advocate argues that the Respondent's assertion that he did not act corruptly and did not know that his actions were inconsistent with the proper performance of his public duties is disingenuous.

With respect to Respondent's argument that Section 112.313(16)(b) affords him with the statutory right to refer business to his law firm, the Advocate contends that this statement contradicts the evidence and misstates the law. Initially, the Advocate specifies that the Respondent did not refer the work of the Zoning Hearing Officer and Special Magistrate positions to his law firm as stated in Respondent's fifth exception, but rather sought and secured appointments to those positions solely for himself. The Advocate further argues that Respondent's fifth exception ignores the statutory prohibition contained in Section 112.313(16)(c) preventing the Respondent from referring legal work to himself or his law firm. Therefore, the Advocate requests that the Commission on Ethics reject Respondent's fifth exception because the ALJ did

not misconstrue any law, rule, or policy and reasonably relied upon the competent, substantial evidence in the record to establish that the Respondent had the "corrupt intent" required to establish a violation of Section 112.313(6), Florida Statutes.

To the extent that the Respondent is challenging the evidentiary basis for the ALJ's finding of "corrupt intent" as provided in paragraph 81, the ALJ carefully and methodically supports the finding of each element required for a violation of Section 112.313(6), Florida Statutes, with competent, substantial evidence including evidence establishing that as City Attorney the Respondent participated in oversight of the drafting of the descriptions and occupational requirements of the prospective public positions of Zoning Hearing Officer and Special Magistrate, evidence establishing that Respondent was personally involved in preliminary discussion and policy decisions regarding the creation of the two new positions, and that the Respondent proffered himself for appointment to the two newly created positions (Tr. 182, 193), to the exclusion of all other potential applicants. (RO pp. 31-34) In paragraph 75, RO pp. 28-29, the ALJ clearly set forth the elements of a potential violation of Section 112.313(6), Florida Statutes, including the definition of "corruptly." Therefore, this exception is rejected. The Commission on Ethics is not persuaded by the arguments of the Respondent that his view of the law is "as or more reasonable than that" of the ALJ, the factual findings of the paragraph are based on competent, substantial evidence, and the proceedings complied with the essential requirements of law.¹

6. In his sixth exception, Respondent takes issue with paragraph 84, page 35 of the RO, which provides:

84. A violation of Section 112.313(7)(a), could be established by proof that Respondent provided counsel and recommendations to the City Commission, as

¹ The ability under certain circumstances to refer legal business pursuant to Section 112.313(16)(b), Florida Statutes, does not obviate the requirements of Section 112.313(6), Florida Statutes.

alleged in the Order Finding Probable Cause, regarding the adoption of local Ordinance 2014-29 requiring the appointment of a Zoning Hearing Officer; by encouraging the City Commission to amend Part II, Chapter 2, Article IX, of the City Code to replace the Code Enforcement Board with a Special Magistrate; and by offering himself for consideration for the position of Zoning Hearing Officer, as well as Special Magistrate. Thus, the Order Finding Probable Cause, on its face, correctly alleged a violation of Section 112.313(7)(a).

The Respondent argues that paragraph 84 is erroneous as a matter of law and should be deleted in its entirety. The Respondent argues that no violation of Section 112.313(7)(a), Florida Statutes, can be established by proof that Respondent merely provided counsel and recommendations to the City Commission and by offering himself for consideration for the positions of Zoning Hearing Officer and Code Enforcement Special Magistrate.

In response, the Advocate contends that Respondent's interpretation of Section 112.313(7)(a) is an unsupportable position which has never been adopted by the Commission on Ethics. Rather, the Advocate contends that the second part of Section 112.313(7)(a) prohibits a public officer or employee from having any employment or contractual relationship that will create a continuing or frequently recurring conflict between the individual's private interests and the performance of the individual's public duties or that would impede the full and faithful discharge of the individual's public duties. The Advocate argues that the record in this matter shows that the Respondent was involved in the early stages of drafting the two Ordinances at issue; that Respondent's discretionary actions transpired while he was serving as City Attorney; that the Respondent offered himself for appointment to the two newly created positions, to the exclusion of all other potential applicants; and that he could have, and actually did, benefit from these actions and thus his ability to perform his public duties could have been compromised. Contrary to the Respondent's contentions, the Advocate asserts that the Respondent, as the City Attorney, was responsible for advising and protecting his client, the City, in all legal matters, with honesty,

forthrightness, loyalty, and fidelity. Thus, the Advocate argues that the Respondent's conduct deprived the City Commission of Respondent's overriding fidelity to it and placed Respondent in the compromising situation involved herein, where, in the exercise of his official judgment or discretion, he may have been tempted to be influenced by personal considerations rather than the public good in contravention of Section 112.313(7)(a), Florida Statutes.

The exception is rejected. We conclude that the Respondent's suggested conclusion of law is not "as or more reasonable than that" of the ALJ in this matter, we further find that factual aspects of paragraph 84 are based upon competent, substantial evidence, and find that paragraphs 84 is based on proceedings which complied with essential requirements of law.²

7. In his seventh exception, Respondent takes issue with paragraph 92, pages 38-39 of the RO, which provides:

92. The Commission asserts that Respondent represented himself and/or the Nelson Hesse law firm before the City Commission when he provided counsel and recommendations to the City Commission regarding the adoption of Ordinance 2014-29 requiring the appointment of a Zoning Hearing Officer and when he offered himself for consideration for the position of Zoning Hearing Officer. Similarly, the Commission asserts that Respondent represented himself and the Nelson Hesse law firm before the City Commission when he provided legal counsel and recommendations to the City Commission regarding the adoption of local Ordinance 2014-30 regarding the establishment of a Special Magistrate to conduct code enforcement violation hearings. This became true the moment he or his firm decided they were interested in seeking either or both of the two positions created by the new ordinances. When Respondent or his firm continued to represent the City regarding the two ordinances that created new positions with the City, he violated section 112.313(16)(c), because the position he sought was for a "private individual or entity" since both Respondent and Nelson Hesse no longer would be either the City Attorney or local government attorney after August 31, 2014, when their contract expired. He was thus acting on behalf of a private individual or entity since the positions he sought to assume after adoption of the ordinances were for him or his firm once they became private citizens as to the City after August 31.

² The ALJ's reasoning is in accord with the purpose of the statute. Zerweck v. State Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982).

Respondent argues that paragraph 92 is erroneous as a matter of law. In support of this exception, the Respondent argues that the Respondent was a "local government attorney" at the time he provided legal counsel and recommendations to the City Commission regarding the adoption of Ordinance 2014-29, requiring the appointment of a Zoning Hearing Officer, and Ordinance 2014-30, regarding the establishment of a Special Magistrate to conduct code enforcement violation hearings. As a local government attorney, the Respondent states Section 112.313(16)(b), Florida Statutes, provides him with the statutory ability to refer business to his law firm. Therefore, the Respondent contends that the statutory exemption contained in Section 112.313(16)(b), Florida Statutes, permitting the Respondent to refer business to his own firm, contravenes the ALJ's determination as to the existence of a violation of Section 112.313(16)(c), Florida Statutes, in paragraph 92. Accordingly, the Respondent requests that the Commission on Ethics revise paragraph 92 as set forth in his seventh exception.

The exception is rejected. We conclude that the Respondent's conclusion of law is not "as or more reasonable than that" of the ALJ in this matter, find that paragraph 92 is based upon competent, substantial evidence, and find that paragraph 92 is based on proceedings which complied with essential requirements of law.

8. In his eighth exception, Respondent takes issue with paragraphs 93 through 98, pages 39-43 of the RO. Respondent argues that paragraphs 93 through 98 set forth the ultimate finding that Respondent violated Sections 112.313(6) and 112.313(16)(c), Florida Statutes, and the reasons and rationale for the recommended penalty. He asserts that as set forth in his previous exceptions, the Findings of Fact are not based upon competent, substantial evidence and the Conclusions of Law are erroneous. Accordingly, the Respondent requests that the Commission

on Ethics delete paragraphs 93, 94, 95, 96, 97, and 98, and replace these determinations with the following:

93. Advocate has failed, by clear and convincing evidence, to establish that Respondent violated the Code of Ethics for Public Officers and Employees as alleged in the Order Finding Probable Cause.

The Commission on Ethics rejects Respondent's eighth exception, finds that paragraphs 93 through 98 are based upon competent, substantial evidence, finds that the ALJ did not misconstrue any law in making his determinations, and finds that paragraphs 93 through 98 are based on proceedings which complied with essential requirements of law.

9. In his ninth exception, Respondent takes issue with the Recommendation in the RO which restates the determination that Respondent violated Section 112.313(6) and Section 112.313(16)(c), Florida Statutes, and which sets forth a recommended penalty. He alleges that as set forth in his previous exceptions, the Findings of Fact are not based upon competent, substantial evidence and the Conclusions of Law are erroneous. Accordingly, he requests that the Commission on Ethics should delete the Recommendation in its entirety and substitute the Recommendation proffered by the Respondent.

The ALJ's determination in the Recommendation of the RO is based on competent substantial evidence as to its factual findings, is a correct statement of applicable law, and is based on proceedings which complied with essential requirements of law. Therefore, the Commission on Ethics rejects Respondent's ninth exception.

Rulings on Advocate's Exceptions

Advocate timely filed three exceptions. Each will be treated below via numbering corresponding to that in the exceptions.

1. In her first exception, the Advocate takes issue with paragraph 94, page 40 of the RO, which states:

94. The penalties available for a former public officer who has violated the Code of Ethics or a person who is subject to the standards of the Code of Ethics, but who is not a public officer or employee include: public censure and reprimand; civil penalty not to exceed \$10,000; and restitution of any pecuniary benefit received because of the violation committed. See § 112.317(1)(d), Fla. Stat. Neither chapter 112, part III, nor chapter 34-5, recognize any mitigating or aggravating factors to consider when determining the appropriate penalty.

More particularly, the Advocate requests that the Commission on Ethics correct the citation to the penalty provision which applies to the Respondent. Paragraph (d) of subsection (1) is an incorrect citation to the penalty provision applicable to this case. Rather, the Advocate recommends that for clarity, the phrase "former public officer who has violated the Code of Ethics or a" should be removed from paragraph 94 and the correct statutory citation in paragraph 94, page 40, should be Section 112.317(1)(e), Florida Statutes.

We accept the Advocate's exception, strike the above-referenced portions of paragraph 94 containing the phrase "former public officer who has violated the Code of Ethics or a," strike the statutory reference to Section 112.317(1)(d), Florida Statutes, and correct the statutory citation in paragraph 94, page 40, to be Section 112.317(1)(e), Florida Statutes. This makes clear the applicable law and thus is as, or more, reasonable than the language used by the ALJ.

2. In her second exception the Advocate takes issue with paragraph 22, pages 9-10, of the RO, which states:

22. Unlike the contract with Ms. D'Agresta, which was signed by City Manager Lewis, Respondent's Agreement was signed by then-City Commission Chair Tom Jones. This indicates that Respondent or his firm was a Charter officer serving under the City Commission, and not a non-charter independent contractor serving under the City Manager on a temporary basis when Respondent and his firm recused themselves from any involvement with the RFP since they intended to submit a proposal.
(Emphasis added)

The exception focuses on whether, as a matter of law, a non-human entity, such as a law firm, can be a "public officer" under the language of Section 112.313(1), Florida Statutes. Section 112.313(1), Florida Statutes, provides the following definition of "public officer":

(1) DEFINITION.—As used in this section, unless the context otherwise requires, the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

The Advocate asserts that the plain meaning and Legislative intent of the statute indicates that a "public officer" must be an individual natural person and not an entity such as the Respondent's law firm. The Advocate further states that if the Commission on Ethics finds that "public officer" can only apply to an individual natural person and not an entity, the Advocate asks that the phrase "or his firm" be stricken from paragraph 22, pages 9-10 of the RO.

The Commission on Ethics accepts the Advocate's second exception and, in the context of Section 112.313, Florida Statutes, determines that "public officer" can only apply to an individual natural person and not an entity, such as the Respondent's law firm, and strikes the above-referenced portion of paragraph 22 containing the phrase "or his firm." This view of the definition is as, or more, reasonable than that of the ALJ.

3. In her third exception the Advocate takes issue with the ALJ's recommended penalty, in part. (RO at p. 44) The "Recommendation" states:

Based on the foregoing Findings of Facts and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Respondent, Robert K. Robinson, violated Section 112.313(6) and 112.313(16)(c), Florida Statutes, and ordering him to pay a penalty of \$5,000 per violation (\$10,000 total).

The Advocate requests that the Commission on Ethics increase the ALJ's recommended penalty making a determination that a public censure and reprimand, along with the recommended

\$10,000 civil penalty, is justified. The Advocate argues that the totality of the facts require a public censure and reprimand because Respondent's conduct detrimentally affected the integrity of the public position and undermined public confidence in the administration of the City's business. The Advocate asserts that the Respondent placed the personal enrichment of himself and his law firm above the public welfare. The Advocate argues that public censure and reprimand, along with the recommended monetary penalty, would sufficiently address Respondent's ethics misconduct and act as an effective deterrent.

In accord with penalties imposed in prior cases,³ and based upon a review of the complete record, the Commission on Ethics finds that public censure and reprimand, in addition to a civil penalty of \$10,000, is warranted because, as the City Attorney, Respondent supervised the drafting of two ordinances (Ordinance 2014-29 and 2014-30) creating two new positions-Zoning Hearing Officer and Special Magistrate (Tr. pp. 311-312), advised his client, the City Commission, of their need to appoint an attorney to fill these positions (Tr. pp. 182, 192-193), immediately offered his services to act as both Hearing Officer and Special Magistrate (Tr. pp. 182-183, 193), suggested that an appointment had to be made that night (Tr. p. 183) pursuant to a manufactured sense of exigency alleged by the Respondent, and further advised the City Commission that he was "uniquely qualified" for both positions, therefore, no one else needed to be considered, in his opinion (Tr. pp. 308-309), all to ensure his continued employment with the City when his tenure

³In re Stephan Carter, Case No. 16-3637EC (Fla. DOAH January 3, 2017)(imposing \$10,000 civil penalty and public censure and reprimand on Respondent, general counsel to the Orange County Clerk of Court, for violation of Section 112.313(6) for obtaining funds in the form of severance from Orange County while continuing to be employed as general counsel) and In re Renee Lee, Case No. 11-6063EC (Fla. DOAH July 11, 2012)(imposing \$5,000 civil penalty and public censure and reprimand on Respondent, a county attorney, for violation of Section 112.313(6) for authorizing a legal opinion justifying a one percent raise in her salary without need for County Commission approval).

as City Attorney was to expire within months. Respondent's conduct was intentional and was for his private benefit; such necessitates a greater penalty. Moreover, the ALJ determined that the Respondent's conduct was both wrongful and inconsistent with the proper performance of his public duties. Therefore, the Commission on Ethics finds that public censure and reprimand, in addition to the ALJ's determination of a civil penalty of \$5,000 per violation (\$10,000 total), is warranted, accepts the Advocate's third exception, and increases Respondent's recommended penalties to include public censure and reprimand for Respondent's violation of Sections 112.313(6) and Section 112.313(16)(c), Florida Statutes.

Findings of Fact

The Commission on Ethics accepts and incorporates into this Final Order and Public Report the findings of fact in the Recommended Order from the Division of Administrative Hearings.

Conclusions of Law

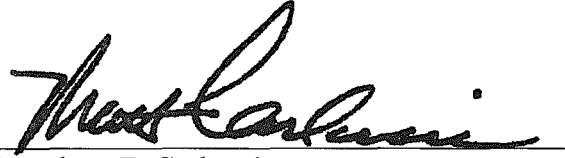
Except to the extent modified above in granting the Advocate's exceptions, the Commission on Ethics accepts and incorporates into this Final Order and Public Report the conclusions of law in the Recommended Order from the Division of Administrative Hearings.

Disposition

Accordingly, the Commission on Ethics determines that Respondent violated Sections 112.313(6) and 112.313(16)(c), Florida Statutes, and recommends that the Governor publicly censure and reprimand Respondent and impose a civil penalty of \$5,000 per violation (\$10,000 total) upon Respondent.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 21, 2017.

April 26, 2017
Date Rendered



Matthew F. Carlucci
Chair, Florida Commission on Ethics

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, AND SECTION 112.3241, FLORIDA STATUTES, BY FILING A NOTICE OF ADMINISTRATIVE APPEAL PURSUANT TO RULE 9.110 FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE CLERK OF THE COMMISSION ON ETHICS, AT EITHER 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303 OR P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709; AND BY FILING A COPY OF THE NOTICE OF APPEAL ATTACHED TO WHICH IS A CONFORMED COPY OF THE ORDER DESIGNATED IN THE NOTICE OF APPEAL ACCOMPANIED BY THE APPLICABLE FILING FEES WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF ADMINISTRATIVE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

cc: Mr. Mark Herron, Attorney for Respondent
Mr. Brennan Donnelly, Attorney for Respondent
Mrs. Elizabeth A. Miller, Commission Advocate
Ms. Connie Brunni, Complainant
The Honorable Robert S. Cohen, Division of Administrative Hearings