

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

IN RE: DAPHNE CAMPBELL,

Case No. 21-1192EC

Respondent.

RECOMMENDED ORDER

Administrative Law Judge (“ALJ”) Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings (“DOAH”) on August 11, 2021, by Zoom conference.

APPEARANCES

For Advocate: Melody A. Hadley, Esquire
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For Respondent: James Jean-Francois, Esquire
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STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Respondent violated Article II, Section 8, Florida Constitution (“Article II, Section 8”), and section 112.3144, Florida Statutes, by filing an inaccurate CE Form 6: Full and Public Disclosure of Financial Interests (“Form 6”) in 2013, 2015, or 2017; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

The Florida Commission on Ethics (“Commission”) filed an Order Finding Probable Cause (“Order”) on July 31, 2019, which was based on the preliminary investigation of a complaint. The Order found probable cause to believe that Respondent, Daphne Campbell (“Respondent”), in her capacity as a member of the Florida Senate; a candidate for the Florida Senate; and a member of, and/or candidate for, the Florida House of Representatives, filed an inaccurate Form 6 in 2013, 2015, and 2017, in violation of Article II, Section 8 and section 112.3144. On April 1, 2021, the Commission requested a public hearing on the matter at DOAH.

The final hearing took place on August 11, 2021. At the hearing, the Advocate for the Commission (“Advocate”) offered the live testimony of Respondent; legal liaison for Miami-Dade Code Compliance Division, Cindy Hoskin; and Bail Bondsman Joe Brennan. Respondent offered the live testimony of Senator Jason Pizzo and Certified Public Accountant Hudson Robillard.

During the hearing, Joint Exhibits 2, 4, and 6 were entered into evidence. Advocate’s Exhibits 3, 5, 7, 11 through 20, and 26 were entered into evidence. Respondent’s Exhibits 15 and 17 through 19 were entered into evidence. The one-volume Transcript was filed with DOAH on September 20, 2021. On September 29, 2021, Respondent filed an unopposed motion entitled Respondent’s Motion for Extension of Time to File Proposed Recommended Final Order (“Motion”). The undersigned granted the Motion; and thereafter both parties filed proposed recommended orders, which were duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Introductory Stipulated Facts

1. Respondent was a candidate for the Florida House of Representatives, District 108, in 2010.
2. Respondent served in the Florida House of Representatives on behalf of District 108 from 2010 through 2016.
3. Respondent was a candidate for the Florida Senate, District 38, in 2016.
4. Respondent served in the Florida Senate on behalf of District 28 from 2016 through 2018.
5. Respondent was a candidate for the Florida Senate, District 28, in 2018.
6. Respondent was required to file a true and accurate Form 6 in each year from 2010 through 2018.
7. Respondent read and understood the instructions to the Form 6 for 2013, 2015, and 2017 prior to completing and filing the forms.

2013 Form 6

8. On June 17, 2014, Respondent filed her 2013 Form 6. By her signature on the face of the Form 6, Respondent affirmed under oath that the information disclosed, thereon, was “true, accurate, and complete.”

9. Instructions for the 2013 Form 6, Part A, for calculating net worth, include the following relevant directives:

In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases. (emphasis in original).

10. Instructions for the 2013 Form 6, Part C, for calculating liabilities, include the following relevant directives:

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net

worth (Part A) in an amount that exceeded \$1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you.

* * *

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed (unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owed to the company of issuance, or contingent liabilities. A “contingent liability” is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. *If you are a “co-maker” on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.* (emphasis supplied).

11. Respondent submitted her Form 6 with a reported net worth of \$417,094 in Part A, as of her chosen reporting date, June 12, 2014.

Mortgage Note

12. Joseph Brennan, bail bondsman and owner of Coral Gables Bail Bonds, Inc., testified that in his business he is typically contacted by either a defendant, or a friend or family member of a defendant, to assist in obtaining a bail bond to secure the defendant’s release from custody after the person’s arrest. When a friend or family member signs for the defendant, Mr. Brennan requires them to pay 10 percent of the bond amount, which is also known as a premium. The premium is a non-refundable payment. It is common in Mr. Brennan’s business for a customer to sign a mortgage note to secure a bond.

13. Respondent and her then-husband, Hubert Campbell, used Coral Gables Bail Bonds to obtain a bail bond for their son, Gregory Campbell, following his arrest.

14. In June of 2011, Gregory Campbell had a bond of \$250,000 following his arrest. In order to post a bond for Gregory, Respondent was required to pay a premium of \$25,000. Respondent paid \$10,000 of the premium, which left an unpaid balance of \$15,000. To secure the remaining \$15,000, Respondent and her husband executed a mortgage obligating their property as collateral. The property that was mortgaged to secure the bond had an address of 14625 NE 4th Ave., Miami, Florida, 33161 (“Miami Property”). The mortgage was recorded in the public records of Miami-Dade County on June 30, 2011, at book 27740, pages 4740 through 4741.

15. Respondent and her husband also executed a mortgage note, which includes a requirement to remit payment of \$400 on the first of each month beginning August 1, 2011. The mortgage note reflects that Respondent and her husband promised “jointly and severally” to pay the \$15,000 premium balance to Coral Gables Bail Bonds. This means, as Mr. Brennan explained in his testimony, that Respondent would still be responsible for payment of the full \$15,000 to Coral Gables Bail Bonds, even if her husband passed away. Respondent stipulated to the fact that she was responsible for repayment on a \$15,000 mortgage, dated June 29, 2011, from Coral Gables Bail Bonds.

16. The \$25,000 premium payment was not refunded to Respondent after her son appeared in court. As Mr. Brennan explained, in his business, the premium amount is owed regardless of whether the defendant subsequently appears in court.

17. A satisfaction of the mortgage was signed on June 18, 2018; and was recorded on August 7, 2018, in the public records of Miami-Dade County at book 31091, page 1561.

18. When applying the clear instructions on the face of the Form 6 to the equally clear terms of the mortgage note, it is decidedly obvious that the mortgage note was not a contingent liability exempt from disclosure. Respondent’s testimony that she believed that the mortgage note was a contingent liability within the meaning of the Form 6 instructions is not credible when balanced with the overwhelming weight of evidence to the contrary. The mortgage note was a reportable liability that should have been disclosed on Respondent’s 2013 Form 6.

19. Respondent did not disclose the mortgage note as a liability on her 2013 Form 6.

Code Enforcement Lien

20. Cindy Hoskin, legal liaison for the Miami-Dade County Code Compliance Division, handles the interactions between governmental agencies and the County Attorney's Office on escalated code enforcement matters.

21. As stipulated by the parties, Respondent's home was cited for code enforcement violations in July of 2011.

22. There are two components to correcting a code enforcement violation: one is payment of the citation; and the other is physical correction of the violation.

23. When a code violation citation is issued, an inspector will assess the property and issue an affidavit of noncompliance if he or she finds that the source of the citation is left uncorrected or the fines due under the citation remain unpaid.

24. Through a "Notice of Assessment of Continuing Penalties," dated March 6, 2012, Respondent was notified that she owed an assessment stemming from the code enforcement citation on the Miami Property.

25. Respondent had 20 days from March 6, 2012, to appeal the assessment. Respondent submitted an untimely appeal, which was signed and dated on September 18, 2012, and date-stamped as having been received by Miami-Dade County on September 19, 2012.

26. As stipulated by the parties, Respondent did not fulfill payment on the code enforcement fines; and subsequently, a lien was placed on the Miami Property by Miami-Dade Code Enforcement in October of 2012.

27. On October 17, 2012, a lien in the amount of \$10,590.16 was recorded against Respondent's Miami Property in the public records of Miami-Dade County at book 28317, page 1429.

28. When a lien is recorded against real property, the purpose is to notify the public that there is a cloud on the property's title based on an outstanding debt. The lien on Respondent's Miami Property is evidence that she owes a debt to Miami-Dade County.

29. At the time of the final hearing, the lien remained unsatisfied.

30. Based on the credible testimony of Ms. Hoskins, Miami-Dade County generally does not consider it necessary to reduce liens to judgments because the lien itself is evidence of the debt. The lien against Respondent's Miami Property is not a contingent liability as that term is defined by the Form 6 instructions, because it is an existing debt that does not require any future event to occur or fail to occur before it attaches. Rather, it clearly fits within the definition of liabilities on the face of the Form 6, which includes as an example: "debts or obligations to governmental entities other than taxes." The code enforcement lien was a reportable liability that should have been disclosed on Respondent's 2013 Form 6.

31. Respondent did not disclose the code enforcement lien as a liability on her 2013 Form 6.

Federal Tax Lien

32. Respondent testified that she owes a federal tax lien, which was in existence as of the reporting date for her 2013 Form 6, and that was still outstanding in an amount of at least \$10,000 at the time of the final hearing. The lien had not been reduced to a judgment, meaning that it was not required to be specifically disclosed as a liability on Respondent's 2013 Form 6 based on the instructions. Respondent was required, however, to include the tax lien in the calculation of her net worth. Respondent testified that she did not include the federal tax lien in the calculation of her net worth on her 2013 Form 6.

Ultimate Finding of Fact

33. Respondent did not file a full and public disclosure of her financial interests with respect to her 2013 Form 6.

2015 Form 6

34. The relevant instructions for the 2015 Form 6, Part A, for calculating net worth; and Part C, for calculating liabilities, are identical to the 2013 Form 6.

35. On her 2015 Form 6, Respondent reported a net worth of \$199,091.21, as of June 6, 2016. By her signature on the face of the Form 6, Respondent affirmed under oath that the information disclosed was "true, accurate, and complete."

36. Although the mortgage note may have remained a reportable liability with respect to Respondent's 2015 Form 6, the evidence did not conclusively establish whether the balance exceeded the \$1,000 threshold specified in the instructions. Even if the balance left on the mortgage was below \$1,000, however, the mortgage had not yet been satisfied as of Respondent's reporting date. Thus, the mortgage was still required to be included in the calculation of Respondent's net worth regardless of the amount. Respondent testified that she did not include the mortgage note when calculating her net worth.

37. The code enforcement lien against Respondent's Miami Property remained unsatisfied at the time of the final hearing in this case. Accordingly, the lien should have been reported as a liability on Respondent's 2015 Form 6.

38. Respondent did not disclose the code enforcement lien as a liability on her 2015 Form 6.

39. Respondent testified that she owes a federal tax lien that was still outstanding in an amount of at least \$10,000 at the time of the final hearing. The lien had not been reduced to a judgment, meaning that it was not required to be specifically disclosed as a liability on Respondent's 2015 Form 6 based on the instructions. Respondent was required, however, to include the tax lien in the calculation of her net worth. Respondent testified that she did not include the federal tax lien in the calculation of her net worth on her 2015 Form 6.

Ultimate Finding of Fact

40. Respondent did not file a full and public disclosure of her financial interests with respect to her 2015 Form 6.

2017 Form 6

41. The relevant instructions for the 2017 Form 6, Part A, for calculating net worth; and Part C, for calculating liabilities, are identical to the 2013 Form 6 and the 2015 Form 6.

42. On her 2017 Form 6, Respondent reported a net worth of \$416,642 as of June 15, 2018. By her signature on the face of the Form 6, Respondent affirmed under oath that the information disclosed was "true, accurate, and complete."

43. Although the mortgage note may have been a reportable liability with respect to Respondent's 2017 Form 6, the evidence did not conclusively establish that there was any balance left on the mortgage, which was recorded in the public records as being satisfied three days after Respondent's reporting date. Respondent testified that she did not include the mortgage when calculating her net worth for her 2017 Form 6, but it is uncertain whether she was required to do so.

44. The code enforcement lien against Respondent's Miami Property remained unsatisfied at the time of the final hearing in this case. Accordingly, the lien should have been reported as a liability on Respondent's 2017 Form 6.

45. Respondent did not disclose the code enforcement lien as a liability on her 2017 Form 6.

46. Respondent testified that she owes a federal tax lien that was still outstanding in an amount of at least \$10,000 at the time of the final hearing. The lien had not been reduced to a judgment, meaning that it was not required to be specifically disclosed as a liability on Respondent's 2017 Form 6 based on the instructions. Respondent was required, however, to include the tax lien in the calculation of her net worth. Respondent testified that she did not include the federal tax lien in the calculation of her net worth on her 2017 Form 6.

Construction Lien

47. Pierre Richard Raymond is a contractor and owner of MPR Construction.

48. Respondent, who was the property owner at the time, contracted with MPR Construction to complete a project to repair water damage at Respondent's Miami Property.

49. While Mr. Raymond expected Respondent's insurance company to pay MPR Construction for its work on the project, Respondent was still liable for payment under the contract if the insurance company did not pay.

50. After the construction project was complete, Mr. Raymond filed a claim of lien for \$41,000 against Respondent's Miami Property on March 2, 2018, which was recorded in the public records of Miami-Dade County, at book 30881, page 1013.

51. The construction lien was satisfied on August 7, 2018.

52. The construction lien was a reportable liability that should have been reported on Respondent's 2017 Form 6 because it was a note payable to MPR Construction in an amount exceeding \$1,000 as of the reporting date, June 15, 2018.

53. Respondent did not disclose the construction lien as a liability on her 2017 Form 6.

Quit Claim Deeds

54. Respondent's son, Gregory Campbell, changed his name to Mikel Mittal.

55. A quit claim deed prepared by "MITTAL 2018 BUSINESS HOLDING TRUST," dated May 19, 2018, was recorded in the public records of Miami-Dade County at book 30987, pages 294 through 296. The deed conveyed Respondent's Miami Property from Respondent and Hubert Campbell to an entity identified as "14625 NE 4th AVE MIAMI LLC." The deed included the notarized signatures of Respondent and Hubert Campbell, as well as the signatures of four witnesses. Respondent confirmed that the driver license number attributed to her in the notary block was accurate.

56. Respondent is not a member of the business entity, 14625 NE 4th AVE MIAMI LLC.

57. A second quit claim deed, dated June 20, 2018, was recorded in the public records of Miami-Dade County at book 31026, pages 2331 through 2332. The second deed conveyed the Miami Property from 14625 NE 4th AVE MIAMI LLC to Respondent's son, Mikel Mittal.

58. Instruments filed in a county's public records, such as the quit claim deeds at issue in this case, plainly fall within the category of "evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs," which is the applicable evidentiary standard under section 120.569(2)(g), Florida Statutes.

59. It is undisputed that the quit claim deeds conveying Respondent's Miami Property were recorded in the public records of Miami-Dade County. It is further undisputed that the driver license number on the first quit claim deed belongs to Respondent. Respondent, however, disputed that she executed the first quit claim

deed or had any contemporaneous knowledge of its existence, despite the fact that a notarized signature purporting to be hers appears on the document. Upon testifying to her ignorance of the two quit claim deeds conveying her property up until she saw it on the news, Respondent was questioned as to whether she ever reported the fraudulent conveyance of her property or asked her son about it. Respondent evaded the questions and ultimately did not articulate any direct answers. The inherent reliability of a recorded instrument cannot be overcome by Respondent's vague and illogical denial of its authenticity.

60. Respondent's Miami Property was returned to her through a third quit claim deed on August 27, 2018.

61. As of Respondent's reporting date for her 2018 Form 6, the Miami Property was not in Respondent's name. Therefore, it was not an asset belonging to her and should not have been included in the calculation of Respondent's net worth. However, Respondent listed the property as an asset valued at \$471,642, and included it in the calculation of her net worth.

Ultimate Finding of Fact

62. Respondent did not file a full and public disclosure of her financial interests with respect to her 2017 Form 6.

CONCLUSIONS OF LAW

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

64. Section 112.322 and Florida Administrative Code Rule 34-5.0015 require the Commission on Ethics to conduct investigations and make public reports on complaints concerning violations of Chapter 112, Part III, (the Code of Ethics for Public Officers and Employees).

65. Respondent, by virtue of her position as a candidate or member of the Florida House of Representatives and the Florida Senate from 2010 through 2018, was subject to Article II, Section 8, and the requirements of Chapter 112, Part III, at all times material to this case.

66. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative. *Balino v. Dep't of HRS*, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, the Commission, through its Advocate, is asserting the affirmative. Proceedings that seek recommended penalties against a public officer or employee require proof of the alleged violation(s) by clear and convincing evidence. See *Latham v. Fla. Comm'n on Ethics*, 694 So. 2d 83 (Fla. 1st DCA 1997).

67. Clear and convincing evidence “requires more proof than a ‘preponderance of the evidence’ but less than ‘beyond and to the exclusion of a reasonable doubt.’” *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear 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 lacking in confusion as to the facts in issue. The evidence must be of such a 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.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994)(quoting, with approval, *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). “Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous.” *Westinghouse Elec. Corp. v. Shuler Bros.*, 590 So. 2d 986, 988 (Fla. 1991).

68. Article II, Section 8, under which Respondent is charged, provides in pertinent part:

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.

* * *

(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 together with one of the following:

a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

69. Section 112.3144 states, in pertinent part:

(1)(a) 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, or any other person required by law to file a disclosure under this section, shall file that disclosure with the Florida Commission on Ethics.

* * *

(6)(a) With respect to reporting, 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 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.

70. Respondent's 2013 Form 6 was inaccurate because she failed to disclose a mortgage note and a code enforcement lien, which were reportable liabilities; and a federal tax lien, which should have been included in the calculation of her net worth. Accordingly, Respondent did not file a full and public disclosure of her financial interests with respect to her 2013 Form 6, in violation of Article II, Section 8 and section 112.3144. The Commission proved the violation by clear and convincing evidence.

71. Respondent's 2015 Form 6 was inaccurate because she failed to disclose a mortgage note and a federal tax lien, both of which should have been included in the calculation of her net worth. Accordingly, Respondent did not file a full and public disclosure of her financial interests with respect to her 2015 Form 6, in violation of Article II, Section 8 and section 112.3144. The Commission proved the violation by clear and convincing evidence.

72. Respondent's 2017 Form 6 was inaccurate because she failed to disclose a construction lien, which was a reportable liability; and a federal tax lien, which should have been included in the calculation of her net worth. Further, Respondent disclosed property as an asset that was not in her name on the reporting date. Accordingly, Respondent did not file a full and public disclosure of her financial interests with respect to her 2017 Form 6, in violation of Article II, Section 8 and section 112.3144. The Commission proved the violation by clear and convincing evidence.

73. Section 112.317(1)(a) specifies penalties applicable to "[a]ny violation of this part," which include "[p]ublic censure and reprimand"; and "[a] civil penalty not to exceed \$10,000."

74. The Commission has a duty to "recommend appropriate action to the proper disciplinary official," with respect to this case, under section 112.324(8). In

accordance with that duty, the Commission has recommended that Respondent receive a public censure and reprimand along with a civil penalty of \$15,000 (\$5,000 per violation), which the undersigned finds appropriate and within the Commission's authority under the facts of this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order and Public Report be entered finding that Respondent, Daphne Campbell, violated Article II, Section 8, Florida Constitution, and section 112.3144, Florida Statutes, on three separate occasions and recommending the imposition of a public censure and reprimand, and a civil penalty of \$15,000 (\$5,000 per violation).

DONE AND ENTERED this 19th day of November, 2021, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of November, 2021.

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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.