FLORIDA
COMMISSION ON ETHICS
JAN 25 2023
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

CONFIDENTIAL

In re: John Polinsky,

Respondent. **Complaint No.: 22-205**

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ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Determination of Investigative Jurisdiction and Order to Investigate and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT

Respondent, John Polinsky, serves on the Dorcas Fire District Board of Commissioners and is the District's Fire Chief.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on January 20, 2023.

ALLEGATION

Respondent is alleged to have violated Section 112.3145(9)(c), Florida Statutes, by willfully failing to timely file a 2018 CE Form 1, "Statement of Financial Interests."

APPLICABLE LAW

Section 112.3145(9)(c), Florida Statutes, provides as follows:

> If a person holding public office or public employment fails or refuses to file an annual statement of financial interests for any year in which the person received notice from the Commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section, regardless of whether the fine imposed was paid or collected, the commission shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful. Such investigation and hearing must be conducted in accordance with s. 112.324. Except as provided in s. 112.324(4), if the commission determines that the person willfully failed to file a statement of financial interests, the commission shall enter an order recommending that the officer or employee be removed from his or her public office or public employment.

In order to establish a violation of Section 112.3145(9)(c), Florida Statutes, the following elements must be proved:

1. Respondent is currently a public officer or employee.

2. Respondent must have failed or refused to file an annual statement of financial interests.

3. Respondent must have received notice from the commission regarding the failure to file for the corresponding year.

4. The maximum automatic fine authorized for failing to file must have accrued.

5. Respondent's failure to file is willful.

ANALYSIS

Since 2012, Respondent has served on the Dorcas Fire District Board of Commissioners and is the District's Fire Chief. (ROI 1, 13) This position requires the filing of a CE Form 1, "Statement of Financial Interests." (ROI 1)

All correspondence regarding this matter was mailed to Respondent at 5566 Highway 393, Crestview, Florida 32539 and/or his email address polinskyjdfd@yahoo.com. (ROI 5)

In May 2019, the Okaloosa County Supervisor of Elections (SOE) mailed an initial filing packet containing a blank 2018 CE Form 1 and information regarding Respondent's obligation to file a financial disclosure form to Respondent. (ROI 6) Respondent failed to file his 2018 CE Form 1 with the SOE by the original due date in July 2019. §112.3145(2)(b), Fla. Stat. On or about July 31, 2019, the SOE mailed Respondent a "Delinquency Notice" via certified mail with the United States Postal Service (USPS). (ROI 7) USPS records reflect the mail was delivered on August 4, 2019. (ROI 7, Exhibit A-1)

On August 19, 2019, the Commission on Ethics (Commission) mailed Respondent a courtesy postcard reminding him of the filing obligation and the potential for a fine if the form is not timely filed. (ROI 8) On September 6, 2019, the Commission mailed Respondent a courtesy letter to inform him that he was accruing a $25 per day fine because his 2018 form had not been received by the SOE. (ROI 9, Exhibit A-2)

Respondent failed to file his 2018 CE Form 1 within 60 days of September 3, 2019 which was the "grace period" deadline. §112.3145(8)(c), Fla. Stat. (ROI 2) As of November 2, 2019, Respondent accrued the maximum fine of $1,500 authorized by Section 112.3145(8)(g), Florida Statutes, for failing to file his form. (ROI 2)

On July 19, 2021, the Commission mailed Respondent a "Notice of Assessment of Automatic Fine" via certified mail which indicated that Respondent accrued a $1,500 fine and included information on his right to appeal. (ROI 10, Exhibit A-3, A-4) USPS records reflect the notice was delivered on July 20, 2021. (ROI 10)

Respondent is listed as the Financial Disclosure Coordinator for the District. (ROI 11) The Commission's Investigator attempted to contact Respondent by telephone to no avail. (ROI 11) Next, the Investigator sent an email to the aforementioned email address, and she subsequently received a phone call from Respondent. (ROI 11) However, as the Investigator attempted to interview Respondent, the call disconnected. (ROI 11) The Investigator called Respondent back, but he failed to answer all subsequent calls. (ROI 11)

Respondent is in a position that requires him to file a financial disclosure form. (ROI 1) At the time that the maximum fine accrued on November 2, 2019, Respondent had not filed his 2018 CE Form 1 even after receiving notice from the SOE and Commission. (ROI 2) Respondent's failure to file after receiving notice and the maximum fine accrual triggered the Commission to initiate an investigation. (ROI 3)

In addition to not filing his CE Form 1 in 2018, Respondent has not filed his form for the years 2012 and 2014. (ROI 12) As Respondent has accrued the maximum fine for each year, the collection of his fines has been paid by withholding salary from his District position. (ROI 12) Respondent currently has a remaining balance of $1,810 in unpaid fines for 2012 and 2014. (ROI 12)

There can be no doubt that Respondent knew or should have known of the need to timely file his 2018 financial disclosure document given his prior dealings with the Commission and the extensive efforts to get him to file. The Commission has defined "willful" as "gross indifference

and reckless disregard to the requirements of the law." His failure to timely file his 2018 CE Form 1 is a "willful" violation of the law.

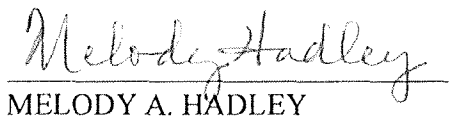
Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3145(9)(c), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

There is probable cause to believe that Respondent violated Section 112.3145(9)(c), Florida Statutes, by willfully failing to timely file a 2018 CE Form 1, "Statement of Financial Interests."

Respectfully submitted this 25th day of January, 2023.



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