FLORIDA
COMMISSION ON ETHICS
AUG 22 2022
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

Complaint No. 22-065

In re: Oren Miller,

Respondent.

RESPONSE TO ADVOCATE'S RECOMMENDATION

Oren Miller, through undersigned counsel, submits this response to the Advocate's Recommendation, pursuant to Rules 34-5.006, Florida Administrative Code.

Recommendations of No Probable Cause

The Advocate has recommended that the Commission on Ethics find that there is "no probable cause" to believe that Mr. Miller violated the Code of Ethics for Public Officers and Employees in three of the six allegations investigated by the Commission and addressed by the Advocate in the Advocate's Recommendation. The Advocate has recommended that the Commission find:

- There is no probable cause to believe that Mr. Miller violated Section 112.313(4), Florida Statutes, by accepting compensation, payment, or

thing of value (i.e., donations to GoFundMe account) when, with the exercise of reasonable care, Mr. Miller should have known that it was given to influence a vote or official action.

- There is no probable cause to believe that Mr. Miller violated Section 112.3148(3), Florida Statutes, by soliciting a donation(s) from a political committee, a lobbyist, who lobbies Mr. Miller's agency, or the partner, firm, employer, or principal of the lobbyist,
- There is no probable cause to believe that Mr. Miller violated Section 112.3148(4), Florida Statutes, by knowingly accepting a donation(s) exceeding $100 to a GoFundMe account from a vendor doing business with Mr. Miller's agency or a political committee, a lobbyist, who lobbies Mr. Miller's agency, or the partner, firm, employer, or principal of the lobbyist,

With respect to these allegations, Mr. Miller urges the Commission adopt the Advocate's Recommendation and find that there is "no probable cause."

Recommendations of Probable Cause

With respect to three allegations, the Advocate has recommended that the Commission find there is "probable cause" to believe that Mr. Miller violated the Code of Ethics for Public Officers and Employees:

- There is probable cause to believe that Mr. Miller violated Section 112.3148(4), Florida Statutes, by failing to timely file a CE Form 9, Quarterly Gift Disclosure," for a donation made to his GoFundMe account during the fourth quarter of 2021.[1]
- There is probable cause to believe that Mr. Miller violated Section 112.3148(4), Florida Statutes, by failing to timely file a CE Form 9, Quarterly Gift Disclosure," for a donation made to his GoFundMe account during the first quarter of 2022.[2]
- There is probable cause to believe that Mr. Miller violated Section 112.3148(4), Florida Statutes, by failing to file an accurate CE Form 9,

[1] The donation cited by the Advocate was a donation to the GoFundMe account by Allison Forth on December 17, 2021. This donation was reported on Mr. Miller's Form 9 filing on June 15, 2022.

[2] The donations cited by the Advocate were two donations to the GoFundMe account by Debra Miller on January 10, 2022 and February 3, 2022. These donations were not reported.

Quarterly Gift Disclosure," for a donation received during the second quarter of 2022.

Probable cause in this case turns on when gifts having a value in excess of $100 in were "accepted" by Mr. Miller. Section 112.3148(8), Florida Statutes, provides that "[e]ach reporting individual or procurement employee shall file a statement with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of $100 in value, if any, **accepted** by him or her...." (Emphasis added.)

The evidence set forth in the Report of Investigation revealed that Mr. Miller accepted the donations to the GoFundMe account on April 12, 2022, when he withdrew funds from the GoFundMe account and deposited those funds into his personal checking account. Consistent with the requirements of the law, Mr. Miller filed a Form 9 gift disclosure on June 15, 2022 containing a list of gifts which believed to be in excess of $100 in value **accepted** by him or her in the previous calendar quarter.

In his June 15, 2022 Form 9 filing, Mr. Miller disclosed more information than required by law, with the exception donation to the GoFundMe account by Debra Miller. The Advocate acknowledges as much:

> Respondent included donations that did not exceed $100 and were received in different quarters. For example, Richard Terry gave a $100 donation during the first quarter on January 11, 2022, which did not, by itself, meet the threshold amount to be disclosed. Richard Terry gave another $100 donation during the second quarter on April 3, 2022, which did not, by itself, meet the threshold amount to be disclosed. Instead, Respondent totaled the two amounts from the two quarters and reported it on his second quarter CE Form 9. This occurred with multiple donations.
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> (AR at pp. 16-17)

The Advocate's Recommendation likewise makes it clear that Mr. Miller did not possess the funds in the GoFundMe account until April 12, 2022. (AR at p.4: "GoFundMe does not process payments and does not hold any funds (ROI 24) A third-party payment processor, the PayPal Giving Fund, is used to process funds donated and distributed in the United States. (ROI 24))" Mr. Miller did not request withdrawal of those funds until April 12, 2022. Again, as noted by the Advocate:

> If you decide that you no longer need the funds that you've raised and you haven't withdrawn them yet, you will be able to refund your donors. Just note that this action is irreversible, so once you decide to issue refunds, you won't be able to undo it. (Footnote omitted)
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> GoFundMe may, at any time, for any reason, without notice, and in its sole discretion offer or issue a refund of Donation (s) with or without consulting with you, which may comprise the entire amount donated to your Fundraiser.

(AR at p. 4)

Mr. Miller's understanding of the reporting requirements of the donations to GoFundMe account is not unreasonable. He reported accepting the donations when he transferred the funds to his personal checking account. His understanding was consistent with the purpose of the account and the withdrawal policies of the GoFundMe account. He did not accept the donations until he withdrew funds from the GoFundMe account and deposited those funds into his personal checking account. Other than the omission of the Debra Miller donation, the public was not denied information as to the contributors to the GoFundMe account; nor was the public denied information as to any potential conflicts of interest.

With respect to these allegations, Mr. Miller urges the Commission to reject the Advocate's Recommendation that there is "probable cause," and instead find there is "no probable cause" or, in the alternative find there is "probable cause" and take no further action pursuant to Rule 34-5.006(6), Florida Administrative Code.[3]

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[3] Rule 34-5.006(6), Florida Administrative Code, provides as follows:

(6) Probable Cause Determination. At its meeting to

Respectfully submitted on this 22nd day of August 2022 by:

/s/ Mark Herron

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determine probable cause, the Commission may continue its determination to allow further investigation; may order the issuance of a public report of its investigation if it finds no probable cause to believe that a violation of the Code of Ethics or other breach of public trust has occurred, concluding the matter before it; may order a final, public hearing of the complaint if it finds probable cause to believe that a violation of the Code of Ethics or other breach of public trust has occurred; or may take such other action as it deems necessary to resolve the complaint, consistent with due process of law. In making its determination, the Commission may consider:

(a) The sufficiency of the evidence against the respondent, as contained in the investigator's report;

(b) The admissions and other stipulations of the respondent, if any;

(c) The nature and circumstances of the respondent's actions;

(d) The expense of further proceedings; and

(e) Such other factors as it deems material to its decision. If the Commission orders a public hearing of the complaint, the Commission shall determine what charges shall be at issue for the hearing.