

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re NATE MCLAUGHLIN,)
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 Respondent.)
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Complaint No. 14-230
DOAH Case No. 16-5244FE

Final Order No. 17-124

FINAL ORDER DETERMINING COSTS AND ATTORNEY FEES

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on December 8, 2017, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on September 21, 2017.

Background

The RO resulted from litigation at DOAH pursuant to the Commission's transmittal to DOAH of Nate McLaughlin's (the respondent in Complaint No. 14-230 and the petitioner as to costs and fees) petition for costs and attorney fees filed against Mark Richter (the complainant in the Complaint and the respondent as to costs and fees). After entry of the RO, the parties (McLaughlin and Richter) had 15 days to file with the Commission exceptions to the RO. Neither party filed exceptions. The RO chronicles the course of the proceedings at DOAH and is replete with references, supported extensively in the record of the proceedings, as to the ALJ's affording Richter opportunities to be heard and participate in the proceedings.¹ Both McLaughlin and

¹ The record shows that Richter did not appear at the DOAH hearing.

Richter were notified of the date, time, and place of the Commission's final consideration of this costs/fees matter. McLaughlin attended; Richter did not attend.

Standards of Review

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law and interpretations of administrative rules contained in a recommended order. However, 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.

Having reviewed the RO and the complete record of the DOAH costs/fees proceeding, the Commission on Ethics makes the following findings, conclusions, and determination:

Findings of Fact

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

Conclusions of Law

The Commission on Ethics accepts and incorporates into this Final Order the conclusions of law in the Recommended Order from the Division of Administrative Hearings.

Determination

Accordingly, the Commission on Ethics determines that Mark Richter filed a complaint with the Commission against Nate McLaughlin, a public officer or employee, with a malicious intent to injure the reputation of McLaughlin by filing the complaint with knowledge that the complaint contained one or more false allegations or with reckless disregard for whether the complaint contained one or more false allegations of fact material to a violation of Part III, Chapter 112, Florida Statutes; and finds that Richter is liable for costs plus reasonable attorney fees incurred in defense of McLaughlin, including the costs and reasonable attorney fees incurred in proving entitlement to and the amount of costs and fees, in the total amount of \$63,110.61. Further, the Commission recognizes that under Section 112.317(7), Florida Statutes, that if Richter fails to pay such costs and fees voluntarily within 30 days of rendition of this Final Order, the Commission

shall forward information of lack of voluntary payment to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees.

ORDERED by the State of Florida Commission on Ethics meeting in public session on December 8, 2017.

December 13, 2017
Date Rendered


Michelle Anchors
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 and Mr. Albert T. Gimbel, Attorneys for Nate McLaughlin
Mr. Mark Richter
The Honorable Suzanne Van Wyk, Division of Administrative Hearings