

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re MILTON WEST,)
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 Respondent.)
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Complaint No. 16-032
DOAH Case No. 16-5483EC

Final Order No. 17-057

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on June 9, 2017, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on April 10, 2017.

Background

This matter began with the filing in 2016 of an ethics complaint by Michelle Grecco ("Complainant") against Milton West ("Respondent"). By an order dated April 6, 2016, 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 June 9, 2016.

By order rendered August 3, 2016, the Commission found probable cause to believe the Respondent violated Section 112.313(7)(a), Florida Statutes, by having a conflicting contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties and/or that would impede the full and faithful discharge of his public duties.

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 November 22, 2016. A formal hearing was held before the ALJ on December 1, 2016. The Advocate and Respondent filed proposed recommended orders with the ALJ.

On April 10, 2017, the ALJ entered his RO finding that Respondent violated Section 112.313(7)(a), Florida Statutes, and recommending a civil penalty of \$10,000 be imposed against the Respondent and that Respondent also be publicly censured and reprimanded.

On April 25, 2017, the Respondent timely submitted to the Commission his exceptions to the RO. On May 5, 2017, the Advocate timely submitted her response to Respondent'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 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

1. In his first exception, Respondent takes issue with paragraphs 28 and 29, pages 15-16 of the RO, which provide:

28. Sections 112.3143 and 112.313(7) are independent laws. Neither statute refers to the other. The statutes require proof of different elements in order to establish a violation. Compliance with one statute does not equate to compliance with the other law. In Commission on Ethic advisory opinion 94-5, the Commission opined that, "[n]othing in section 112.313(7)(a) indicates that compliance with section 112.3143 creates an exemption from its application; in contrast, other specific exemptions are provided in section 112.313(12)." Respondent's argument in this regard is rejected.

29. The clear and convincing evidence establishes that Respondent violated section 112.313(7)(a).

More particularly, Respondent argues that in paragraphs 28 and 29, the RO concludes that compliance with the voting conflicts law does not obviate a conflict under Section 112.313(7)(a), Florida Statutes, citing to advisory opinions of the Commission. The Respondent argues that the application of these advisory opinions to Respondent is application of an unadopted rule to agency action which is prohibited by Section 120.57(1)(e)1., Florida Statutes.

The Respondent contends that the RO's conclusion that compliance with the voting conflicts law will not obviate a conflict under Section 112.313(7)(a), Florida Statutes, is contrary to the principle of statutory construction which dictates that statutes dealing with the same subject matter should be considered *in pari materia*. The Respondent asserts that to the extent that the provisions of Section 112.3143(3) and 112.3143(4) are specifically designed to require abstention and permit participation in cases where a measure inures to the special private gain or loss of an appointed local officer, as did the proposed rezoning amendment to the Arbors PUD before the Ocoee Planning and Zoning Commission ("OPZC") which inured to the special private gain or loss of the Respondent, Section 112.3143(3) and (4) must be read *in pari materia* with Section

112.313(7)(a), Florida Statutes, to obviate what appears to be a violation of Section 112.313(7)(a), Florida Statutes. Thus, the Respondent argues that there is no violation of Section 112.313(7)(a) based upon the facts and circumstances of the case.

The Respondent also argues that to the extent that the provisions of Section 112.3143(3) and (4) are specifically designed to require abstention and permit participation in cases where a measure inures to the special private gain or loss of an appointed local officer, yet can be interpreted to result in a violation of Section 112.313(7)(a), such an interpretation requires application of the rule of lenity. The Respondent asserts that the rule of lenity comes into play when the text of a statute is subject to competing reasonable interpretations. The Respondent argues that when compliance with one provision of the law results in a violation of another provision of the law involving the same economic interests, the rule of lenity requires that the statutes be construed most favorable to the Respondent.

The Respondent also argues that the provisions of Section 112.311(2), Florida Statutes, create a basis wherein the Respondent's compliance with Section 112.3143(3) and (4) permits him to avoid the conflict presented by Section 112.313(7)(a).

The Respondent contends that there is nothing in either Section 112.3143(3) and (4) or Section 112.313(7)(a), Florida Statutes, advising the Respondent that compliance with the voting conflicts law will not obviate a conflict under Section 112.313(7)(a), Florida Statutes. As such, he contends that the failure of the statutory provisions to provide fair notice of the conduct it proscribes raises significant constitutional issues. Moreover, he argues that while the Commission cannot rule on constitutional issues, the application of Section 112.313(7)(a), Florida Statutes, to the facts and circumstances of this case raises additional questions of due process wherein men of

common intelligence must guess as to whether there can be a violation of Section 112.313(7)(a) in light of Respondent's compliance with Sections 112.3143(3) and (4).

The Respondent states that the Order Finding Probable Cause in this matter is based upon the Advocate's Recommendation. With respect to the alleged violation of 112.313(7), Florida Statutes, the Advocate's Recommendation refers, in part, to CEO 94-5. Moreover, the Respondent asserts that the Recommended Order likewise relies on CEO 94-5 which is an advisory opinion of the Commission issued in response to a member of the Housing Finance Authority of Dade County. Pursuant to the requirements of Section 112.322(3)(b), Florida Statutes, the advisory opinion is binding on the conduct of the public officer or employee who sought the opinion. Thus, the Respondent alleges that to the extent that the advisory opinion has been used as a basis for the Commission's finding of probable cause or that it has been used in concluding that Respondent has violated the Code of Ethics, CEO 94-5 is a statement of general applicability that implemented, interpreted, or prescribed law or policy. Respondent argues that it is without legal support and has not been lawfully adopted by the Commission as a rule.

Respondent asserts that because Section 112.3143(3) and (4) must be read to obviate what appears to be a violation of Section 112.313(7)(a), Florida Statutes, the conclusions of law set forth in paragraphs 28 and 29 must be rejected. The Respondent argues that instead paragraphs 28 and 29 should read as follows:

28. Statutes relating to the same subject or object must be construed together to harmonize the statutes and to give effect to the Legislature's intent. Section 112.313(7) proscribes contractual relationship that may lead a public official to his economic interest above the public interest. Yet Section 112.3143(3) and (4) allows a public official to abstain from voting on a measure – and to participate in the discussion of that matter – that "inures to his or her special private gain" when proper notice is given. As noted above, Respondent complied with the requirements of Sections 112.3143(3) and (4). One statutory provision cannot proscribe what another statute allows.

29. Accordingly, as a matter of law, there is no violation of Section 112.313(7)(a).

In her Response to Respondent's Exceptions, the Advocate states that the Respondent's first exception is predicated upon the inaccurate assertion that the undisputed existence of a conflict of interest under Section 112.313(7)(a), Florida Statutes, resulted from the Respondent's compliance with Section 112.3143, Florida Statutes. Moreover, she contends the Respondent's assertion that the ALJ's finding of a violation of Section 112.313(7)(a) arose from his participation in his agency's public meeting where he abstained from a vote on a measure which inured to his special private gain, also is inaccurate. Rather, the Advocate argues that the ALJ correctly concluded that the Respondent violated Section 112.313(7)(a) due to his contractual relationship regarding the sale of his property, which conflicted with his public duties. She argues that contrary to the Respondent's belief, his "participation" in the discussion at the meeting was not the factual reality that subjected him to a violation of Section 112.313(7)(a), Florida Statutes.

The Advocate asserts that her argument is supported by the ALJ's Conclusion of Law in paragraph 26, which has not been challenged by the Respondent. Paragraph 26 provides:

26. Respondent's contractual relationship with the buyer, both in his individual capacity and as manager/shareholder in WORY, encroaches on his public duties of independence and impartiality because the contract imposes on Respondent an obligation to take all steps necessary, including "appearing and testifying at the various hearings," to assist buyer in securing the "Buyer Required Approvals." Further encroachment is evidenced by the fact that if Respondent defaulted on his contractual obligation to assist buyer in securing the "Buyer Required Approvals," then not only would Respondent lose the benefit of the bargain with respect to the West Road property but he would be obligated to reimburse buyer's documented out-of-pocket expenses up to \$15,000. Simply stated, Respondent's contract with buyer created a situation which could reasonably tempt Respondent to act with dishonor.

In paragraphs 3, 8, 9, and 11 of the RO, the ALJ found that Respondent was engaged in a contractual relationship to sell property for \$1,890,540 which was contingent upon the rezoning

of the property in order for the sale to proceed. As part of the Respondent's obligations under the contract, he was required to cooperate with the buyer of the property in securing all necessary governmental approvals, including but not limited to, supporting the potential buyer at various governmental hearings.

During the time at issue, the Respondent served on the OPZC which is the board responsible for making recommendations to the City Commission regarding the rezoning of this property. The Advocate argues that the terms of the contract required that the Respondent take all actions necessary to ensure the rezoning of the property or suffer a \$15,000 loss. Thus, the Advocate contends that the Respondent's incentive to ensure that the property was rezoned was monetary in nature.

The Advocate states that the conflicting contractual prohibition found in Section 112.313(7)(a) is preventive in nature and is intended to prevent situations in which private considerations may override the faithful discharge of public responsibilities. Zerweck v. State Commission on Ethics, 409 So. 2d 57, 60 (Fla. 4th DCA 1982). She argues that from the moment the Respondent signed the contract at issue, his private responsibilities and/or duties regarding the contractual relationship(s) placed him in a position that tempted dishonor to his public position. She asserts that Respondent's duties as a OPZC member were to objectively review and offer impartial recommendations to the City Commission regarding the rezoning of the property. Thus, she argues that a violation of Section 112.313(7)(a) occurred when Respondent's public duty to be impartial regarding the rezoning issue intersected with his private interests to get the rezoning issue approved so that he could sell the property for \$1,890,540.

With respect to Respondent's argument that the principle of statutory construction which dictates that statutes dealing with the same subject matter should be considered *in pari materia*,

the Advocate states that this is a "red herring" argument designed to confuse the issue because this principle is only necessary to give effect to legislative intent. In the instant matter, the Advocate argues that when read *in pari materia* it is evident that the Legislature intended for Sections 112.3143 and 112.313(7) to stand alone. She argues that an examination of these statutes indicates that the Legislature in enacting Section 112.313(7)(a) intended to prohibit conflicting contractual relationships, whereas in enacting Section 112.3143 the Legislature intended to prohibit voting conflicts. She further argues that nothing in the plain language of these provisions is vague, ambiguous, or in conflict. Thus, she asserts that under these circumstances it is not necessary to resort to the *in pari materia* canon of statutory interpretation to discern the Legislature's intent.

The Advocate also seeks to refute the Respondent's argument that the rule of lenity should be applied to find that the Respondent's participation in a meeting on a matter that inured to his special private gain in accordance with the voting conflicts prohibition of Section 112.3143(3) and (4) resulted in his "compliance" with the contractual relationship prohibition contained in Section 112.313(7)(a). She contends that the rule of lenity is only applicable when the text of a statute is subject to competing interpretations and does not apply, as here, where the plain language and Legislative intent of the statutes are clear.

The Advocate further argues that the Respondent's characterization of the language of Section 112.311(2), Florida Statutes, to exempt the Respondent from compliance with the Code of Ethics is erroneous. She notes that Section 112.311(2), Florida Statutes, clearly sets forth the Legislative intent to address the conduct of public officials as evidenced from the final sentence of this provision which provides that "[p]ublic officials should not be denied the opportunity, available to all other citizens, to acquire and retain economic interests *except when conflicts with the responsibility of such officials to the public cannot be avoided.*" [Emphasis added] The

Advocate further argues that the Respondent misconstrues the provisions of law to benefit his position and fails to acknowledge the existence of language contained in Section 112.316, Florida Statutes, which provides that it is not the intent of the Code of Ethics to prevent a public officer from following any pursuit which does "not interfere with the full and faithful discharge by such public officer . . . of his or her duties to the state or county, city, or other political subdivision of the state involved."

With respect to Respondent's argument that nothing in either Section 112.3143(3) and (4) or Section 112.313(7)(a), Florida Statutes, affords the Respondent with notice that compliance with the voting conflicts law will not obviate a conflict under Section 112.313(7)(a), Florida Statutes, the Advocate contends that the provisions of Section 112.313(12) explicitly lists exemptions from a conflict of interest under Section 112.313(7). The Advocate asserts that just as the Respondent had access to the statutes regarding the voting conflicts law, he also had access to the statutory provisions defining "conflict," "the necessity of impartiality," and the local codes of the OPZC setting forth his responsibilities as a member.

The Advocate further asserts that Respondent's argument that the ALJ's reference to an advisory opinion constitutes the application of an unadopted rule is unwarranted. The Advocate notes that in this matter the ALJ ruled on the Respondent's unadopted rule challenge argument via separate order wherein he denied Respondent's "Motion to Invalidate Agency or Limit Action Based on Unadopted Rule."¹ Moreover, she argues that Section 120.57(1)(l), Florida Statutes, does not contemplate the use of exceptions to an RO to appeal a rule challenge. Finally, the Advocate

¹ See In re Milton West, "Order Denying Respondent's Motion to Invalidate Agency or Limit Action Based on Unadopted Rule," Case No. 16-5483EC (Fla. DOAH April 10, 2017)(holding that advisory opinions issued by the Commission are not rules as defined in Section 120.52(16), because they are not statements of general applicability.)

argues that the Respondent merely is arguing that the ALJ should have arrived at a different conclusion. However, citing to Heifetz v. Department of Business Reg., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985), the Advocate asserts that the Commission cannot reweigh the evidence or resolve conflicts in favor of the Respondent as such matters are within the exclusive province of the ALJ. Therefore, the Advocate requests that the Commission reject Respondent's first exception and that paragraphs 28 and 29 of the RO remain as written by the ALJ.

Respondent's first exception is rejected. Paragraphs 28 and 29 of the RO are predicated upon the ALJ's conclusion that Sections 112.3143 and 112.313(7)(a), Florida Statutes, are independent laws and "compliance with one statute does not equate to compliance with the other law." (RO p. 15) The conclusions contained in paragraphs 28 and 29 comport with the plain meaning and Legislative intent of the statutes to be enforced separately and our own application of the statutes, wherein compliance with the voting conflicts laws contained in subsections 112.3143(3) and (4), Florida Statutes, did not obviate a conflict of interest under Section 112.313(7)(a). As such, the application of the canons of statutory construction *in pari materia* and the rule of lenity are not necessary in this matter. We also decline to find that the ALJ's reference to an advisory opinion in paragraph 28 constitutes the application of an unadopted rule. The ALJ denied the Respondent's unadopted rule challenge in this proceeding via his "Order Denying Respondent's Motion to Invalidate Agency or Limit Action Based on Unadopted Rule." We are not inclined to overturn the ALJ's order or reweigh the evidence and arguments presented to the ALJ to resolve conflicts in favor of the Respondent, as requested herein. Therefore, we conclude that the Respondent's conclusions of law in paragraphs 28 and 29 are not "as or more reasonable than that" of the ALJ in this matter, find that paragraphs 28 and 29 are based upon competent,

substantial evidence, and find that paragraphs 28 and 29 are based on proceedings which complied with essential requirements of law.

2. In his second exception, Respondent takes issue with paragraphs 30 through 33, pages 16-17 of the RO, which provide:

PENALTY

30. The penalties available for a public officer who violates the Code of Ethics include: impeachment; removal from office; suspension from office; public censure and reprimand; forfeiture of no more than one-third of his or her salary per month for no more than 12 months; a civil penalty not exceed \$10,000; and restitution of any pecuniary benefit received because of the violation committed. § 112.317(1)(a), Fla. Stat.

31. A primary purpose of civil penalties is to deter misconduct by securing obedience to the law. Tull v. United States, 481 U.S. 412 (1987); see also Hudson v. United States, 522 U.S. 93 (1997) ("all civil penalties have some deterrent effect"). Thus, an imposition of a penalty is important to deter future ethical misconduct, and critical to ensure the public's trust and confidence in the system.

32. The West Road property sold for \$1,890,540. While Respondent was not the sole recipient of the sale proceeds, his share of the same was based on the fact that individually he owned four acres and had a shared interest in the remaining six acres. A civil penalty should be something more than what is tantamount to "the cost of doing business." See, e.g., In re: Joseph G. Spicola v. Comm'n on Ethics, Case No. 91-6730EC (Fla. DOAH Apr. 9, 1992; Fla. COE Jun. 5, 1992).

33. In its Proposed Recommended Order, Advocate proposed a civil penalty in the amount of \$10,000 and that Respondent also receive a public censure and reprimand. These are reasonable recommendations given the facts of this case.

RECOMMENDATION

Based on the Findings of Facts and Conclusions of Law, it is RECOMMENDED that a civil penalty of \$10,000.00 be imposed against Respondent due to his violation of section 112.313(7)(a) and that Respondent also be publicly censured and reprimanded.

The Respondent argues that because the ALJ determined that the Respondent had complied with Section 112.3143(3) and (4), the recommended penalty is a violation of the Respondent's constitutional rights to receive both procedural and substantive due process. He further argues that since the Respondent did exactly what the statute authorized him to do, the proposed penalty also violated the "Excessive fines" clause of the United States Constitution. Thereafter, the Respondent requests that paragraphs 30 through 33 of the RO and the penultimate Recommendation should be deleted and the following new Recommendation should be substituted:

Based on the foregoing, it is RECOMMENDED that the Commission enter a final order dismissing the instant complaint.

In response to Respondent's second exception the Advocate argues that the Respondent is again erroneously arguing that his participation in the meeting in accordance with Section 112.3143, Florida Statutes, is the cause of his violation of Section 112.313(7)(a). She contends that for the reasons set forth in her response to Respondent's first exception, this argument should be rejected.

With respect to Respondent's assertion that the penalty recommendation in the RO violates the "Excessive fines" clause of the United States Constitution, the Advocate argues that the interpretation of the United States Constitution is not with the jurisdictional authority of the Commission. Moreover, she contends that the recommended fine in the instant case bears a direct and proportional relationship to the gravity of the offense and the benefit Respondent received due to his ethical violation. She further argues that Section 112.317, Florida Statutes, provides that \$10,000 civil penalty and public censure and reprimand are valid penalties that can be imposed on a violator in the Respondent's position. As such, the Advocate states that the ALJ correctly applied

the law in this matter and requests that the Commission reject Respondent's second exception and affirm the penalty recommended by the ALJ.

Respondent's second exception is rejected. The ALJ's conclusions reached in paragraphs 30 through 33 as well as the Recommendation are based upon the record including testimonial and documentary evidence from which he drew permissible inferences to determine the penalty provisions excepted to by the Respondent. While it is within the authority of this agency to alter the recommended penalty, the ALJ in the instant case heard the entirety of the evidence and was in the best position to judge the credibility of the witnesses. Criminal Justice Standards and Training Comm'n v. Bradley, 596 So. 2d 661, 664 (Fla. 1992). Because of the ALJ's unique perspective, and considering the ALJ's findings of fact in paragraphs 3, 8, 9, and 11 of the RO, wherein the ALJ found that Respondent was engaged in a contractual relationship to sell property for \$1,890,540 which was contingent upon the rezoning of the property in order for the sale to proceed, coupled with the ALJ's unchallenged conclusion of law contained in paragraph 26 wherein he found that the Respondent's "contract with the buyer created a situation which could reasonably tempt the Respondent to act with dishonor" in violation of Section 112.313(7)(a), we are not persuaded by the Respondent that this penalty recommendation should be altered. (RO pp.14-15) Further, the penalty recommended is not in excess of that allowed under Section 112.317, 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

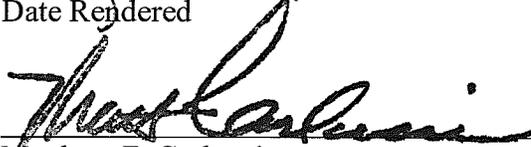
The Commission on Ethics accepts and incorporates into this Final Order and Public Report the conclusions of law in the Recommended Order from the Division of Administrative Hearings.

Disposition

Accordingly, the Commission on Ethics determines that Respondent violated Section 112.313(7)(a), Florida Statutes, and recommends that the Governor publicly censure and reprimand Respondent and impose a civil penalty of \$10,000 upon Respondent.

ORDERED by the State of Florida Commission on Ethics meeting in public session on June 9, 2017.

June 14, 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
Ms. Melody A. Hadley, Commission Advocate
Ms. Michelle Grecco, Complainant
The Honorable Linzie F. Bogan, Division of Administrative Hearings