

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

In re NANCY OAKLEY,	)		
	)	Complaint No.	17-013
Respondent.	)	DOAH Case No.	18-2638EC
	)		
	)	Final Order No.	19-001
_____	)		

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on January 25, 2019, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on December 7, 2018.

Background

This matter began with the filing in February 2017 of an ethics complaint by Shane B. Crawford ("Complainant") against Nancy Oakley ("Respondent" or "Oakley"). The complaint alleged that the Respondent, while serving as a City Commissioner for the City of Madeira Beach, violated the Code of Ethics by making "unwanted sexual advances" toward the Complainant, who at the time was the City Manager, as well as toward another member of City staff. By an order rendered February 13, 2017, the Commission on Ethics' Executive Director determined that the allegations of the complaint were legally sufficient to indicate possible violation of Section 112.313(6), Florida Statutes, and ordered Commission staff to investigate the complaint, resulting in a Report of Investigation ("ROI") dated February 13, 2018.

By order rendered April 25, 2018, the Commission found probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by exhibiting inappropriate behavior toward City staff.

The matter was forwarded to DOAH for assignment of an ALJ to conduct a formal hearing and prepare a recommended order. A formal evidentiary hearing was held before the ALJ on September 24, 2018, in Clearwater, Florida. The Advocate filed a proposed recommended order with the ALJ on November 13, 2018. The Respondent also filed a proposed recommended order with the ALJ on November 13, 2018.

On December 7, 2018, the ALJ entered his Recommended Order ("RO") finding that the Respondent violated Section 112.313(6), Florida Statutes, and recommending a penalty of public censure and reprimand against the Respondent, as well as the imposition of a civil penalty of \$5,000 against the Respondent.

On December 25, 2018, the Respondent submitted to the Division of Administrative Hearings her exceptions to the RO. On January 3, 2019, the Advocate submitted to the Commission a Response to Respondent's Exceptions. 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

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.

However, the agency may not reject or modify findings of fact made by an ALJ unless the agency first determines from a review of the entire record, and states with particularity in its order, that the findings of fact were not based upon competent, substantial evidence or that the proceedings upon which the findings were based did not comply with 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.

An agency may accept the entirety of 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, the complete record of the proceeding, the Respondent's exceptions, the Advocate's response to the exceptions, and having heard argument from the Advocate,<sup>1</sup> the Commission on Ethics makes the following rulings, findings, conclusions, recommendations, and dispositions:

#### Rulings on Respondent's Exceptions

The Respondent filed an "Overall Exception" followed by twenty-three specific, numbered responses and a "Memorandum of Law." Each will be treated below by reference to the "Overall Exception," the numbered responses, or the "Memorandum of Law."

In the paragraph immediately prior to the "Overall Exception," the Respondent argues the Complainant failed to appear at the administrative hearing, thereby violating her constitutional right to cross-examine him. However, a complainant is not a party to an ethics proceeding. See Rule 34-5.011, Florida Administrative Code. There is no requirement in statute or rule that a complainant be present at an administrative hearing or be summoned to testify at the hearing. And while the Respondent also claims in this paragraph that the initial complaint failed to allege the date or place of the offenses, and failed to contain specific allegations that she groped the Complainant or any other individual, it should be noted that the complaint claimed the Respondent

---

<sup>1</sup> The Respondent was notified of the Commission's final consideration of this matter but did not appear.

engaged in "unwanted sexual advances" toward the Complainant and others, a claim which covers groping. Moreover, the Report of Investigation fully addressed the date and place of the alleged conduct, and described the alleged groping, in paragraphs 5, 6, 9, 10, and 13, placing the Respondent on notice of these allegations. This was in accordance with Section 112.322(1), Florida Statutes, which states that, during the course of an investigation of a sworn complaint, the Commission's duty includes "investigation of facts and parties materially related to the complaint at issue." The phrase "facts materially related to the complaint at issue" is defined to mean:

facts which tend to show a violation of this part or s. 8, Art. II of the State Constitution by the alleged violator other than those alleged in the complaint and consisting of separate instances of the same or similar conduct as alleged in the complaint, or which tend to show an additional violation of this part or s. 8, Art. II of the State Constitution by the alleged violator which arises out of or in connection with the allegations of the complaint. [Section 112.312(11), Florida Statutes]

In the "Overall Exception," the Respondent argues the ALJ considered allegations against her by individuals who did not file a complaint. In particular, she cites testimony from three witnesses (David Marsicano, Thomas Verdensky, and Michael Maximo)<sup>2</sup> whom she claims testified over her objections to allegations not in the complaint. (V1. 145, 156; V2. 112-114).<sup>3</sup> This testimony concerned instances where the Respondent allegedly licked the faces of individuals other than the Complainant.

---

<sup>2</sup> While this paragraph does not mention Thomas Verdensky by name, some of the pages cited in the paragraph correspond to his testimony at the hearing.

<sup>3</sup> References to "V1" refer to the first volume of trial transcript from September 24, 2018, hearing, while references to "V2" refer to the second volume of transcript.

However, regarding Marsicano, the complaint specifically alleged that the Respondent made "unwanted sexual advances" toward not only the Complainant, but also Marsicano, and specifically stated the "advances included unwanted kissing and licking of our necks and face[s]." Moreover, paragraphs 9 and 10 of the Report of Investigation contained sworn testimony from Marsicano and his ex-wife that the Respondent licked Marsicano's face, as well as engaged in other behavior toward him of similar nature. Finally, page 6 of the Respondent's prehearing statement acknowledged the allegations concerned Marsicano, as it states an issue of law to be resolved at the administrative hearing was "[w]hether Respondent violated Section 112.313(6), Florida Statutes, by exhibiting inappropriate behavior toward City staff, Crawford, and Marsicano, as alleged in the complaint."

Regarding Verdensky, paragraph 15 of the Report of Investigation indicates he told the Commission's Investigator under oath that the Respondent had "licked his face in the past" and that he had seen her lick Marsicano's face. Accordingly, Marsicano and Verdensky both offered prior sworn testimony regarding the matters to which they testified at the hearing, providing the Respondent with sufficient notice that their hearing testimony would cover similar content. Had the Respondent wanted to clarify further the content of their testimony prior to the hearing, she could have requested a more definite statement. No such request was made.

Regarding Maximo, the transcript of the hearing indicates he testified solely as a rebuttal witness and that his statements were offered to demonstrate the Respondent's reputation in the community. (V2. 110-116). In other words, his testimony was intended to rebut testimony from the character witnesses offered during the Respondent's case-in-chief, not to establish the elements of Section 112.313(6). And while the Respondent claims in her "Overall Exceptions," as well as

in Response 17, that Maximo was never listed on the Advocate's witness list, the Administrative Procedure Act clearly states "[n]otice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal." Section 120.58(1)(d), Florida Statutes. Further, given that Page 4 of the Advocate's Prehearing Statement indicates "Mike Maxemow" as a potential witness, it appears notice was provided and the witness's name was misspelled in either the Prehearing Statement or the Trial Transcript.

Also in the "Overall Exception"—as well as in Responses 18 and 23—the Respondent argues the ALJ also impermissibly considered testimony from Cheryl McGrady Crawford during the hearing.<sup>4</sup> In particular, the "Overall Exception" notes McGrady's testimony that the Respondent delayed the start of a City Commission meeting, cursed at her, and attempted to hit her. (VI. 75-79). The Respondent claims these allegations became an "integral part" of the ALJ's order even though they were not alleged in the complaint. Response 23 also argues that these findings factored into the ALJ's recommended penalty, and, therefore, the penalty should be rejected or modified.

The Respondent is correct inasmuch as the underlying complaint does not contain allegations concerning this conduct. However, as previously discussed, Section 112.322(1), states the Commission's duty is to investigate "all facts and parties materially related to the complaint at issue." The phrase "facts materially related the complaint at issue" is defined in Section 112.312(11) to include facts which tend to show an additional violation of a provision within the Code of Ethics and which arise out of or in connection with the allegations of the complaint. In

---

<sup>4</sup> To assist in distinguishing between the Complainant and Cheryl McGrady Crawford—the Complainant's wife—this order will refer to Cheryl McGrady Crawford as "McGrady," which is also her designation in the RO.

Paragraph 5 and 6 of the Report of Investigation, witnesses offered sworn testimony to the Investigator that the identified conduct—meaning the Respondent delaying the start of the meeting, cursing at McGrady, and attempting to hit McGrady—occurred immediately prior to and/or following the Respondent making unwanted physical advances toward the Complainant, as alleged in the complaint. Such conduct—at the very least—qualifies as "facts materially related" as it arose "out of or in connection with the allegations of the complaint." Accordingly, they were properly incorporated into the Order Finding Probable Cause, which stated that, "based on the preliminary investigation of this complaint and the recommendation of the Commission's Advocate, there is probable cause to believe the Respondent, as a City Commissioner for the City of Madeira Beach, violated Section 112.313(6), Florida Statutes, by exhibiting inappropriate behavior toward City staff." Given the content in the Report of Investigation, and considering the scope of the Order Finding Probable Cause, the Respondent was notified that the administrative hearing would address the identified allegations, and the ALJ properly allowed and relied upon the subsequent testimony.

In Response 1, the Respondent takes exception to paragraph 20 of the RO, which found the Respondent delayed the start of a City Commission meeting, engaged in a heated discussion prior to the meeting with the Complainant and McGrady, and refused to attend the meeting if McGrady was present. The Respondent argues these findings are not supported by competent substantial evidence. This exception is rejected. McGrady testified the Respondent told her "and everyone in that area" that she "would not be part of the meeting" if McGrady was present. (V1. 75). McGrady further testified the Respondent brought the Complainant into the discussion by telling him that she would not go on the dais unless McGrady was removed. (V1. 76).



In Responses 2 through 7, the Respondent takes exception to findings of the ALJ that she licked the Complainant's neck and face following the City Commission meeting, and then groped him and attempted to hit McGrady. These findings are made in paragraphs 23, 24, 25, 26, 28, and 29 of the RO. The Respondent argues these findings were not supported by competent, substantial evidence, and emphasizes testimony offered during her case-in-chief that she did not lick or grope<sup>5</sup> the Complainant, as well as testimony from additional witnesses who only testified to licking, not groping. These exceptions are rejected. McGrady's testimony—which detailed how the Respondent cursed at her, licked and groped the Complainant, and then attempted to hit her—provides competent substantial evidence to support the ALJ's findings. (V1. 76-78). In addition, sworn statements made in a deposition from Nicole Bredenburg—which was offered during trial as Advocate's Exhibit 6 (V1. 15)—also indicated the Respondent licked and groped the Complainant, and attempted to hit McGrady. (Advocate's Exhibit 6, pages 7-10). Further, contrary to the Respondent's specific claim in Exception 6, Joseph Campagnola—the head of security at the event where the Respondent allegedly engaged in the described conduct—testified that when he arrived on the scene, he was told the Respondent had not only licked the Complainant's face but had groped him as well. (V1. 168). While this evidence may have been contrary to that offered by other witnesses, determining its credibility was within the sole province of the ALJ and cannot be reweighed at this time.

---

<sup>5</sup> In Response 4, the Respondent again claims the complaint failed to allege that she groped the Complainant. However, the complaint does allege the Respondent engaged in "unwanted sexual advances" toward the Complainant. In addition, paragraphs 5, 6 and 10 of the Report of Investigation indicate the Respondent groped the Complainant, placing her on notice of the "unwanted sexual advances" that would be addressed during the hearing.

In Response 8, the Respondent takes exception to the portion of paragraph 31 of the RO, which states, in part, that the Respondent "created a hostile environment and employees were rightfully fearful of retaliation if they reported Respondent's actions." The Respondent claims this finding was not supported by competent, substantial evidence as no one testified they were fearful to report the Respondent. This exception is rejected. McGrady testified she did not report the Respondent's actions as she did not want to lose her job. (V1. 80-81). In addition, during the testimony of David Marsicano—a City employee—he stated he tries to "regularly dodge [the Respondent] if I at all possibly can" as he does not "need any problems." (V1. 142). He then testified he has "had issues and fears with [the Respondent] since 2004. And this is just more that continues to roll on." (V1. 143).

In Response 9, the Respondent takes exception to paragraph 32 of the RO, which finds Robin Vander Velde—a witness for the Respondent and a former City Commissioner—was outraged that a complaint had been filed against the Respondent and had only a "foggy" recollection of the City Commission meeting where the Respondent allegedly licked the Complainant's face. The Respondent claims these findings were not supported by competent substantial evidence. This exception is rejected. Vander Velde testified at trial that she "was just as outraged" as the Respondent about the underlying complaint (V2. 33-34), could not recall the Respondent's role during the City Commission meeting (V2. 31-32), and could not remember whether she and the Respondent left the meeting together. (V2. 28-31).

In Response 10, the Respondent takes exception to paragraph 33 of the RO, which refers to Ron Little—a witness for the Respondent—and states he testified that he "would want to help [the] Respondent." The Respondent emphasizes that Little also testified he would never lie for

her. This exception is rejected. The Respondent appears to be attempting to bolster the credibility of Little's testimony, which is an evidentiary matter that is solely within the province of the ALJ and cannot be reweighed at this time.

In Responses 11 through 15, the Respondent takes exception to paragraphs 34, 35, 37, 38, and 39 of the RO, which indicate that several witnesses testified they were unaware of allegations that the Respondent had past arrests for driving under the influence and petit theft, allegations that she had participated in a mail hoax involving the United States Postal Service, and her reasons for leaving employment with the City of Clearwater. The Respondent states these allegations of past arrests and offenses were either false or occurred decades ago, that she resigned from the City of Clearwater due only to depression caused by the death of her husband, and that the Advocate never offered any admissible evidence to support these allegations. These exceptions are rejected. It cannot be said the ALJ's recommendation hinged upon these allegations of past conduct. Competent substantial evidence—separate and apart from the testimony discussed in Responses 11 through 15—supports the finding that Respondent exhibited inappropriate behavior toward City staff. (VI. 76-78, 145).

In Response 16, the Respondent takes exception to paragraph 40 of the RO, which states Linda Hein—a witness for the Respondent's case-in-chief—could not provide eyewitness testimony concerning the alleged licking incident at the City Commission meeting. The Respondent argues that if the licking had occurred, Hein would have noticed, as she was observing the Respondent during the time when it allegedly happened. This exception is rejected. The Respondent is attempting to use Hein's testimony to challenge the credibility of other witnesses who testified that the licking occurred. As previously noted, determinations regarding the

credibility of witness testimony is within the province of the ALJ and cannot be challenged at this time.

In Response 18,<sup>6</sup> the Respondent takes exception to paragraph 55 of the RO, which states, among other things, that the "Respondent committed an assault and battery of Mr. Crawford [the Complainant], a city employee" at the November 2012 City Commission meeting. The Respondent claims "No one testified that a battery occurred on McGrady." However, paragraph 55 of the RO does not find that the Respondent committed a battery on McGrady, but only that she committed a battery on Crawford, the Complainant. The Respondent also argues in Response 18 that "[o]ther allegations not part of the Complaint should not have been considered." It is unclear which allegations the Respondent is addressing. To the extent this exception is referring to the claims that the Respondent delayed the start of a City Commission meeting, cursed at and attempted to hit McGrady, and made unwanted physical advances toward other members of City staff besides the Complainant, it is rejected for the reasons previously described.

In Response 19, the Respondent takes exception to paragraph 56 of the RO. The Respondent highlights the portion of the paragraph where the ALJ found she committed a battery against the Complainant by licking and groping him, as well as the ALJ's statement that any discrepancies in the testimony concerning this incident were insignificant. The Respondent then states "[c]onflicts in key testimony destroys the State's high burden of proof standard." It appears the Respondent is arguing that because there was conflicting testimony, there was not competent substantial evidence in the record to find she licked and groped the Complainant. This exception is rejected because, as previously discussed, competent substantial evidence supports the ALJ's

---

<sup>6</sup> Response 17 is previously addressed in the discussion concerning the "Overall Exception."

finding that the licking and groping occurred, and resolving any conflicts in the testimony is an evidential matter solely within the province of the ALJ.

In Response 20, the Respondent takes exception to paragraph 59 of the RO, which states the six witnesses called during the Respondent's case-in-chief functioned solely as character witness and failed to offer testimony concerning the "Respondent's truthfulness or reputation for honesty or truth in the community[.]" the only purpose for which character testimony was allowed. The Respondent cites to testimony from several of these witnesses in which they claimed the alleged licking and groping did not occur, thereby implying the witnesses functioned as more than just character witnesses. This exception is rejected because, again, decisions concerning the importance and weight of witnesses' testimonies are evidential matters solely within the province of the ALJ, not the Ethics Commission.

In Response 21, the Respondent takes exception to paragraph 62 of the RO, which states that testimony concerning past allegations against her (i.e., arrest for DUI, arrest for petit theft, disciplinary employment action, forced resignation from employment, and perpetrating a United States Postal Service mail hoax) tended "to adversely affect or at least negatively reflect" upon her character. The Respondent claims these past allegations were false and the ALJ improperly accepted them as true. This exception is rejected. As previously described, competent substantial evidence—separate and apart from the testimony concerning these past allegations—supported the finding that Respondent exhibited inappropriate behavior toward City staff. (VI. 76-78, 145).

In Response 22, the Respondent takes exception to paragraph 63 of the RO, which states, among other things, that "the testimony of her witnesses, her prior DUI, the three cases of licking a man's face in public prior to the City Commission meeting, and the incidents occurring at the

meeting, all point to someone who may have an alcohol problem." The Respondent argues this statement ignored testimony from a defense witness who sat by her at the City Commission meeting and testified she was not drunk at that time. (V2. 36). It appears the Respondent is attempting to argue that competent substantial evidence did not support the ALJ's finding that she was intoxicated at the City Commission meeting. This exception is rejected. Testimony was offered that the Respondent exhibited intoxicated behavior immediately prior to the meeting. (V1. 95, 100). And, regardless, testimony concerning whether the Respondent was intoxicated was not material to finding a violation. As previously discussed, competent substantial evidence—separate and apart from the testimony concerning whether the Respondent was intoxicated—supports the finding that Respondent exhibited inappropriate behavior toward City staff. (V1. 76-78, 145).

Following the 23 enumerated responses,<sup>7</sup> the Respondent includes a section entitled "Memorandum of Law" in which she argues that clear and convincing evidence was not presented during the administrative hearing to establish a violation of Section 112.313(6). However, as previously discussed, the Commission is prohibited at this stage of the proceeding from reweighing the evidence and its analysis is confined to whether competent substantial evidence supports the ALJ's findings. As previously discussed, this standard was met.

The Respondent also takes exception in the "Memorandum of Law" to the recommended penalty, which included a public censure and reprimand as well as a civil penalty of \$5,000. The Respondent states she is widowed and, on this basis, requests that no penalty be assessed in the event that a violation is found. While it is within the province of the Commission to alter the recommended penalty, the ALJ in the instant case heard the entirety of the evidence and was in

---

<sup>7</sup> Response 23 is previously addressed in the discussion concerning "Overall Exception."

the best position to judge the credibility of the witnesses. Because of the ALJ's unique perspective, we are not persuaded by the Respondent that this penalty recommendation should be altered. 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 Administrative Law Judge of the Division of Administrative Hearings rendered on December 7, 2018. The findings are based upon competent substantial evidence and the proceedings upon which the findings are based complied with essential requirements of law.

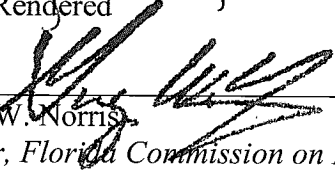
#### Conclusions of Law

The Commission on Ethics accepts and incorporates into this Final Order And Public Report the conclusions of law in the Recommended Order from the Administrative Law Judge of the Division of Administrative Hearings rendered on December 7, 2018.

#### Disposition

Accordingly, the Commission on Ethics determines that the Respondent violated Section 112.313(6), Florida Statutes, and recommends that the Governor publicly censure and reprimand the Respondent and impose a civil penalty of \$5,000 upon the Respondent.

ORDERED by the State of Florida Commission on Ethics meeting in public session on  
January 25, 2019.

January 30, 2019  
Date Rendered  
  
\_\_\_\_\_  
Guy W. Norris  
*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, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709, OR AT THE COMMISSION'S PHYSICAL ADDRESS OF 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303; 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. Kennan G. Dandar, Attorney for Respondent  
Mr. Timothy M. Dandar, Attorney for Respondent  
Ms. Elizabeth A. Miller, Commission Advocate  
Ms. Melody A. Hadley, Commission Advocate  
Mr. Shane B. Crawford, Complainant  
The Honorable Robert S. Cohen, Division of Administrative Hearings