

December 13, 2021

FLORIDA
COMMISSION ON ETHICS
DEC 13 2021
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VIA EMAIL

State of Florida
Commission on Ethics
Attn: Millie W. Fulford
Complaint Coordinator
Fulford.millie@leg.state.fl.us

Re: Response to Report of Investigation – Cynthia Lynn Howard,
Complaint Number 21-184

Dear Ms. Fulford,

This firm represents Ms. Cynthia Howard in connection with Complaint Number 21-184 (“Complaint”). Ms. Howard received an initial copy of the Report of Investigation (“Report”) dated November 19, 2021 that did not include a complete copy of the exhibits to the Report. She also received a complete version of the Report on December 1, 2021.¹ Pursuant to Rule 34-5.006, Florida Administrative Code, Ms. Howard respectfully submits this letter as her written response to the Report. If you have any questions regarding this response, we respectfully request that you contact us and provide Ms. Howard the opportunity to address any such questions.

I. Background

Ms. Howard is an appointed, unpaid, member of the Florida Workers’ Compensation Joint Underwriting (“FWCJUA”) Board of Governors (“Board”). In addition to her role as a Board member for the FWCJUA, Ms. Howard is a workers’ compensation industry consultant for C3WCS Consulting, Inc. This is her only source of income and she does not have any conflicts that she is required to report. As such, Ms. Howard has filed a CE Form 1 since 2015.

In 2019, Ms. Howard became both the primary caretaker of her terminally ill father, and the medical guardian for her severely disabled granddaughter. As a result, Ms. Howard resided with her terminally ill 91-year old father and her 88-year old mother, and she was the only local relative that could care for her elderly and ill parents. This required Ms. Howard to coordinate medical appointments, several emergency rescue calls, surgeries, medical advocacy, insurance paperwork, financial management, and oversight during hospitalizations. In addition, her father was a beloved

¹ Please note that Exhibit C4 to the Report contains a confirmation of delivery to a P.O. Box that is not associated with Ms. Howard and the signature of the recipient does not portray Ms. Howard’s signature or her daughter’s signature. We respectfully request that Exhibit C4 be removed from the Report and the record for this Complaint.

December 13, 2021

Page 2

member of the clergy at the Episcopal Cathedral in Orlando, and she graciously coordinated visits from parishioners and clergy throughout his illness. As you can certainly imagine, the significant life changes required to care for her ill parents, and her granddaughter, consumed a great deal of Ms. Howard's time, energy, and attention.

Moreover, while the COVID-19 pandemic has had a severe impact on many people, Ms. Howard was even more significantly impacted when her disabled granddaughter, who suffers from cerebral palsy and severe mental delay, was hospitalized and intubated with, at the time, an undiagnosed lung condition in December 2019. The lung condition was later diagnosed as COVID-19. As the medical guardian for her granddaughter, Ms. Howard was also obliged to care for her granddaughter during this difficult time while continuing to care her terminally ill father.

Despite these necessary familial obligations, Ms. Howard did everything she could to continue serving the FWCJUA Board. Indeed, as noted in the Report, she strived to attend every Board meeting, attending all meetings in 2019 and missing only one meeting in 2020. Often times, Ms. Howard attended these meetings from her car in the hospital parking lot or in a borrowed office.

During this difficult time, Ms. Howard was forced to put her normal everyday life on hold. She was able to arrange for her daughter to pick up her mail from her post office box, and when that was not possible, Ms. Howard would attempt to pick up the mail herself while commuting between her residence and her parent's residence. When she was required to attend a Board meeting in person, Ms. Howard coordinated care for her father and granddaughter through church members with her daughter on standby for emergencies.

While Ms. Howard made every attempt to ensure her responsibilities, both familial and personal, were attended to, as would be expected for anyone in a similar situation, certain deadlines were inadvertently missed, including the deadline to file her CE Form 1 filings. Ms. Howard certainly did not purposefully disregard her CE Form 1 filings. Indeed, Ms. Howard as she has only one source of income and no conflicts to disclose, and there is simply no reason for Ms. Howard to have intentionally not filed such disclosures. She obtained no benefit from missing the relevant deadlines, and in fact missing these deadlines resulted in Ms. Howard paying significant fines to the Commission. Rather, Ms. Howard's inadvertent missing of such deadlines resulted from Ms. Howard's many familial and personal obligations at the relevant time, as discussed in detail herein. In fact, as noted in the Report, Ms. Howard did attempt to file her 2019 CE Form 1, but given the stressors noted above, mistakenly mailed the completed form to the FWCJUA instead of the Commission.

Given the circumstances outlined above, including her attempt to file the 2019 CE Form 1, it is clear that Ms. Howard did not *willfully* fail to timely file her 2018 and 2019 CE Form 1s. Rather, Ms. Howard's inadvertent failure to file such forms resulted from the overwhelming and unexpected responsibilities of having to act as the primary caretaker, during a global pandemic, for her elderly and terminally ill father and her severely disabled and ill granddaughter during the period in which the

December 13, 2021

Page 3

2018 and 2019 forms were due. Ms. Howard has already paid all fines assessed for these filings and has also timely filed her 2020 form. Ms. Howard will also ensure such forms are timely filed in the future.

II. Ms. Howard's Conduct Was Not Willful

Section 112.3145(9)(c), Florida Statutes, permits the Commission to initiate an investigation and conduct a public hearing to determine whether a person's failure to file an annual statement of financial interests was willful for any year in which the person received notice from the Commission regarding the failure to file and has accrued the maximum automatic fine. If the Commission finds that the person willfully failed to file a statement of financial interests, an order recommending that the officer or employee be removed from her public office or public employment shall be entered. § 112.3145(9)(c), Fla. Stat. The term "willful" is not defined in chapter 112, Florida Statutes. However, the Commission has previously defined "willful" as "gross indifference and reckless disregard to the requirements of the law." *See In re Joel Davis*, Final Order No. 18-035 (Florida Commission on Ethics June 13, 2018); *see also In re Cheryl L. Thomas-Hughes*, Final Order No. 18-151 (Florida Commission on Ethics Dec. 12, 2018). Further, Dictionary.com defines "willful" as "deliberate, voluntary, or intentional." *See Willful*, DICTIONARY.COM, available at <https://www.dictionary.com/browse/willful>.

The Report, the Commission's interview with Ms. Howard, and the facts set forth herein, demonstrate that Ms. Howard did not act with gross indifference and reckless disregard to the requirements of the law. Likewise, she did not intentionally or deliberately fail to file her CE Form 1s for 2018 and 2019. Rather, as detailed herein, Ms. Howard's inadvertent failure to file such reports was due to the personal obligations she was managing at the time such reports were due to be filed.

Notwithstanding the unusual and very trying circumstances she was presented with, particularly during a global pandemic, Ms. Howard made every reasonable attempt to fulfill her duties as a FWCJUA Board member by attending almost every Board meeting (including in person meetings that required her to take extraordinary steps in finding replacement caregivers for her family). She attempted to file her CE Form 1s, but mistakenly sent her form to the FWCJUA instead of the Commission. Further, Ms. Howard paid all applicable fines and filed the outstanding Form 1s. Ms. Howard gained nothing through the delay in filing of these Form 1s, and in fact the late filing of these forms resulted in the payment of thousands of dollars in fines. Accordingly, it should be evident that Ms. Howard did not willfully disregard her filing requirements, and imposing the harsh penalty of recommending that she be removed from her position as an FWCJUA Board member would, respectfully, not be justified. The payment of thousands of dollars in fines has certainly been sufficient punishment for Ms. Howard, and indeed she timely filed her 2020 CE Form 1.



FOLEY & LARDNER LLP

December 13, 2021

Page 4

III. Conclusion

For the reasons described above, we respectfully submit that there exists no probable cause to support a finding that Ms. Howard willfully failed to file a full and public disclosure of financial interests. Accordingly, we respectfully request that the Commission dismiss the Complaint. We very much appreciate your time and efforts regarding this matter, and welcome the opportunity to discuss this investigation and address any questions or concerns you may have.

Sincerely,

/s/ James A. McKee

James A. McKee