

DEC 13 2021

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**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

In re: Cynthia Lynn Howard,

Respondent.

Complaint No. 21-184

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Determination of Investigative Jurisdiction and Order to Investigate and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT

Respondent, Cynthia Lynn Howard, serves as a member of the Board of Governors of the Florida Workers' Compensation Joint Underwriting Association.

JURISDICTION

The Executive Director of the Commission on Ethics ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on November 19, 2021.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, by willfully failing to timely file a 2018 CE Form 1, "Statement of Financial Interests."

APPLICABLE LAW

Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, provides as follows:

If a person holding public office or public employment fails or refuses to file an annual statement of financial interests for any year in which the person received notice from the Commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section, regardless of whether the fine imposed was paid or collected, the commission shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful. Such investigation and hearing must be conducted in accordance with s. 112.324. Except as provided in s. 112.324(4), if the commission determines that the person willfully failed to file a statement of financial interests, the commission shall enter an order recommending that the officer or employee be removed from his or her public office or public employment.

In order to establish a violation of Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, the following elements must be proved:

1. Respondent is currently a public officer or employee.
2. Respondent must have failed or refused to file an annual statement of financial interests.
3. Respondent must have received notice from the commission regarding the failure to file for the corresponding year.
4. The maximum automatic fine authorized for failing to file must have accrued.
5. Respondent's failure to file is willful.

ANALYSIS.

Respondent serves on the Board of Governors (Board) for the Florida Workers' Compensation Joint Underwriting Association, Inc. (FWCJUA). (ROI 1) This position required the filing of a CE Form 1, "Statement of Financial Interests." (ROI 1)

All correspondence from the Florida Commission on Ethics (Commission) to Respondent was mailed to P.O. Box 780013, Orlando, Florida 32878-0013 which is the address for Respondent's consulting company. (ROI 6)

On May 17, 2019, the Commission mailed an official "Memorandum" containing a blank 2018 CE Form 1 to Respondent. (ROI 7, Exhibit A1) On May 30, 2019, FWCJUA Executive Director and Financial Disclosure Coordinator Laura Torrence emailed Board members a reminder bulletin to complete and file a 2018 CE Form 1 no later than July 1, 2019. (ROI 8, Exhibit B1-B2)

Respondent failed to file her 2018 CE Form 1 with the Commission by the original due date in July 2019. (Exhibit A2) On or about July 24, 2019, the Commission mailed Respondent a "Delinquency Notice" via certified mail which was signed for but the signature is illegible. (ROI 9, Exhibit A2-A4) On August 20, 2019, the Commission mailed Respondent a courtesy postcard reminding her of the filing obligation and the potential for a fine if the form is not timely filed. (ROI 10, Exhibit A5)

On September 6, 2019, the Commission mailed Respondent a courtesy letter to inform her that she was accruing a \$25 per day fine. (ROI 11) Respondent failed to file her 2018 CE Form 1 within 60 days of September 3, 2019 which was the "grace period" deadline. (ROI 2) As of November 2, 2019, Respondent accrued the maximum fine of \$1,500 authorized by Section 112.3145(8)(g), Florida Statutes, for failing to file her form. (ROI 2)

On February 4, 2020, the Commission levied the \$1,500 fine against Respondent. (ROI 12) On February 11, 2020, the Commission mailed Respondent a "Notice of Assessment of Automatic Fine" via certified mail for which Respondent signed. (ROI 13, 14, Exhibit A6-A9)

On April 13, 2021, the Commission received Respondent's "Appeal of Automatic Fine for Form Year 2018." (ROI 15) Respondent advised that due to her care of her "ill elderly parents" she failed to address her own personal responsibilities. (ROI 15) However, Respondent attended all 11 FWCJUA Board of Governors' meetings in 2019. (ROI 5) The Commission received Respondent's 2018 form on April 27, 2021. (ROI 16)

On September 15, 2021, the Commission denied Respondent's appeal. (ROI 17) Respondent paid the fine on November 9, 2021. (ROI 18)

Respondent is currently a public officer. (ROI 1) Since 2015, Respondent has filed a financial disclosure form with the Commission. (ROI 33) She previously paid a \$50 fine for untimely filing her 2017 CE Form 1. (ROI 33)

At the time that the maximum fine accrued on November 2, 2019, Respondent had not filed her 2018 CE Form 1 even after receiving notice from the Commission. (ROI 2) Respondent's failure to file after receiving notice and the maximum fine accrual triggered the Commission to initiate an investigation. (ROI 4)

While Respondent does not specifically recall receiving correspondence from the Commission or the email bulletin from her agency, she does not deny receiving the correspondence. (ROI 34) Nevertheless, Respondent has received ethics training which included a discussion regarding the obligation to file a financial disclosure form and she had experience with filing. (ROI 34)

There can be no doubt that Respondent knew or should have known of the need to timely file her 2018 financial disclosure document given her knowledge of the process, her prior dealings with the Commission, and the extensive efforts to get her to file. Her failure to file her 2018 CE Form 1 timely was a "willful" violation of the law.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, by willfully failing to timely file a 2019 CE Form 1, "Statement of Financial Interests."

APPLICABLE LAW

Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, as set forth under Allegation One, above.

ANALYSIS

The underlying circumstances relating to this allegation are contained above in Allegation One.

All correspondence from the Commission to Respondent was mailed to P.O. Box 780013, Orlando, Florida 32878-0013 which is the address for Respondent's consulting company. (ROI 19)

On May 18, 2020, the Commission mailed an official "Memorandum" containing a blank 2019 CE Form 1 to Respondent. (ROI 20, Exhibit C1) On May 29, 2020, Ms. Torrence emailed

Board members a reminder bulletin to complete and file a 2019 CE Form 1 no later than July 1, 2020. (ROI 8, Exhibit B3-B4)

Respondent failed to file her 2019 CE Form 1 with the Commission by the original due date in July 2020. (Exhibit C2) On or about July 31, 2020, the Commission mailed Respondent a "Delinquency Notice" via certified mail which was returned "unclaimed." (ROI 22, Exhibit C2-C4) On August 11, 2020, Ms. Torrence emailed Respondent alerting her that the Commission had not received her form to which Respondent responded, "Will do. [Thank you] for the reminder." (ROI 23, Exhibit B5-B6) On August 20, 2020, the Commission mailed Respondent a courtesy postcard reminding her of the filing obligation and the potential for a fine if the form is not timely filed. (ROI 24, Exhibit C5)

On September 8, 2020, the Commission mailed Respondent a courtesy letter to inform her that she was accruing a \$25 per day fine. (ROI 25) Respondent failed to file her 2019 CE Form 1 within 60 days of September 1, 2020 which was the "grace period" deadline. (ROI 2) As of October 31, 2020, Respondent accrued the maximum fine of \$1,500 authorized by Section 112.3145(8)(g), Florida Statutes, for failing to file her form. (ROI 3)

On March 16, 2021, the Commission levied the \$1,500 fine against Respondent and mailed Respondent a "Notice of Assessment of Automatic Fine" via certified mail for which there is an illegible sign. (ROI 27, Exhibit C6-C9)

On April 13, 2021, the Commission received Respondent's "Appeal of Automatic Fine for Form Year 2019." (ROI 30) Respondent advised that due to her care of her "ill elderly parents" she failed to address her own personal responsibilities and that the pandemic presented additional limitations and obstacles to her filing her form. (ROI 30) However, Respondent attended all but

one of the 11 FWCJUA Board of Governors' meetings in 2020. (ROI 5) The Commission received Respondent's 2018 form on April 13, 2021.¹ (ROI 29)

On September 15, 2021, the Commission denied Respondent's appeal. (ROI 17) Respondent paid the fine on November 9, 2021. (ROI 18)

Respondent is currently a public officer. (ROI 1) Since 2015, Respondent has filed a financial disclosure form with the Commission. (ROI 33) She previously paid a \$50 fine for untimely filing her 2017 CE Form 1. (ROI 33)

At the time that the maximum fine accrued on October 31, 2020, Respondent had not filed her 2019 CE Form 1 even after receiving notice from the Commission. (ROI 3) Respondent's failure to file after receiving notice and the maximum fine accrual triggered the Commission to initiate an investigation. (ROI 4)

While Respondent does not specifically recall receiving correspondence from the Commission or the email bulletin from her agency, she does not deny receiving the correspondence. (ROI 34) Nevertheless, Respondent has received ethics training which included a discussion regarding the obligation to file a financial disclosure form and she had experience with filing. (ROI 34)

There can be no doubt that Respondent knew or should have known of the need to timely file her 2019 financial disclosure document given her knowledge of the process, her prior dealings with the Commission, and the extensive efforts to get her to file. Her failure to file her 2019 CE Form 1 timely was a "willful" violation of the law.

¹ In December 2020, Respondent mailed her 2019 form to her own agency, FWCJUA, instead of the Commission. (ROI 26, Exhibit B7) However, it would have still been untimely filed if it had been received by the Commission in December 2020.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes.

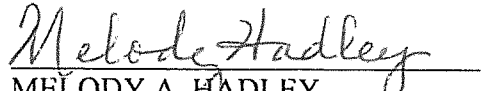
RECOMMENDATION

It is my recommendation that,

1. There is probable cause to believe that Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, by willfully failing to timely file a 2018 CE Form 1, "Statement of Financial Interests."

2. There is probable cause to believe that Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, by willfully failing to timely file a 2019 CE Form 1, "Statement of Financial Interests."

Respectfully submitted this 13th day of December, 2021.


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