

MAR 30 2026

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

In re: Jonathan L. Owens,

Complaint No.: 23-231

Respondent.

MOTION TO DISMISS COMPLAINT

COMES NOW, the undersigned Advocate for the Florida Commission on Ethics, to request that the above-referenced complaint be dismissed for the following reasons:

1. Respondent formerly served as Aide to then-Escambia County Commissioner Douglas Underhill.
2. At the time of Respondent's employment, Escambia County was being sued by another former employee, Dr. Rayme Edler.
3. Complainant in this case, then-Escambia County Commissioner Jeff Bergosh, occasionally used his personal cell phone to text or email about County business, thus producing public records. He also used it to engage in privileged attorney-client communications with the Escambia County Attorney about the ongoing litigation.
4. Bergosh began experiencing technical trouble with his phone and therefore asked County IT to back up his phone to avoid the loss of public records that he was required to maintain.
5. This case was prompted by Respondent's appearance on a radio talk-show, during which Respondent repeatedly stated that a thumb drive containing public and non-public information from Bergosh's personal cell phone was delivered to his County office.
6. During the radio show, Respondent stated that after he provided Dr. Edler's attorneys with an affidavit in support of her lawsuit, he was asked if he had any other information

related to the lawsuit. Respondent replied that he had the thumb drive with the information from Bergosh's personal cell phone and sent them a copy of the data. This data included the privileged attorney-client communications.

7. Respondent's disclosure of the personal cell phone data also prompted the County to bring a civil action against Respondent. During the June 2024 hearing on Respondent's motion to dismiss that action, counsel for Respondent specifically argued that Dr. Edler's attorneys had used the data in their lawsuit against the County.

8. Relying on Respondent's version of events as he described them during his radio interview, the Commission found probable cause that Respondent violated Section 112.313(8), Florida Statutes, on March 8, 2024.

9. Once the case moved to DOAH, Respondent claimed he had a reasonable fear of criminal prosecution for his conduct and therefore asserted his 5th Amendment right against self-incrimination in response to all discovery questions, including but not limited to a simple request to admit that he is a former County employee.

10. When the Advocate moved to compel answers to discovery or to otherwise deem matters admitted, Respondent requested and obtained an emergency stay of all proceedings and discovery at DOAH, to bring a collateral attack on the ethics case in Circuit Court. In the Circuit Court action, Respondent asserted that his conduct was so unrelated to his public position that the Commission on Ethics had no jurisdiction to bring the case to DOAH. That action was dismissed and litigation at DOAH resumed.

11. After litigation at DOAH resumed, Respondent submitted sworn statements from the former Escambia County IT Director Bart Siders and Assistant State Attorney Greg Marcille, both of which contradict the statements Respondent made on the radio show. As part of the

criminal investigation into Owens' actions, Siders was compelled via subpoena to make his statement and was therefore granted immunity for it. Siders then stated that after Bergosh asked the IT Department to copy his phone data to preserve public records, he received a phone call from Respondent making a public records request for a copy of Bergosh's phone data. Siders stated that he met Respondent in the parking garage adjacent to the County office building and provided a copy of Bergosh's phone data to Respondent. Marcille's statement corroborates Siders' statement. The exchange between Siders and Respondent did not involve the County's legal department, and no review for private, confidential, or privileged material was conducted. The entire unredacted contents of Bergosh's phone was given to Respondent.

12. Respondent now asserts that the events described by Siders' and Marcille's affidavits amount to nothing more than the fulfillment of a valid public records request and therefore had no connection with Respondent's public employment. However, these events do not illustrate the fulfillment of a valid public records request.

13. Despite the foregoing, this action should be dismissed due to the outcome of Underhill v. Commission on Ethics. 403 So. 3d 496 (Fla. 1st DCA 2025). In that case, Commissioner Underhill, Respondent's supervisor, also disclosed privileged attorney-client communications pertaining to pending Escambia County litigation and was found to have violated Section 112.313(8), Florida Statutes.

14. In their opinion, the Underhill Court opined that, for purposes of Section 112.313(8), Florida Statutes, the receipt of privileged attorney-client communication does not, by itself, amount to a benefit.

15. Additionally, subsequent to the preceding at DOAH, attorneys for both sides of Edler's lawsuit against Escambia County opined that the disclosure of the privileged communications was not a significant factor in the \$5 million settlement of the case.

16. On March 19, 2026, Advocate filed with DOAH a Motion to Close File and Relinquish Jurisdiction Pursuant to Section 120.57(1)(i), Florida Statutes, representing that upon further investigation into the allegations at issue in the Commission's Order Finding Probable Cause, the additional and clarifying testimony is sufficient to warrant further review by the agency. Respondent filed his own Motion to Relinquish Jurisdiction on March 23, 2026, requesting that the ALJ's order contain certain express findings.

17. The Administrative Law Judge entered an order Closing the File and Relinquishing Jurisdiction on March 24, 2026.

WHEREFORE, in the absence of clear and convincing evidence to establish that Respondent violated Section 112.313(8), Florida Statutes, the undersigned Advocate requests that the case be dismissed.

Respectfully submitted this 30th day of March 2026.



JOSEPH C. BURNS
Advocate for the Florida
Commission on Ethics
Florida Bar No.: 1023385
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050
(850) 414-3300