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"A Public Office is a Public Trust"

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MEMORANDUM

TO: Commission Members
FROM: Steven J. Zuilkowski, General Counsel 
DATE: October 9, 2024
RE: Motion to Reconsider Whether Probable Cause Exists (Complaint No. 22-079)

This memorandum concerns the Motion to Reconsider Whether Probable Cause Exists that has been filed in Complaint No. 22-079 (In re Randall Fine). The following discussion is intended to summarize for you the procedural background of this complaint proceeding, and clarify what options are available to you.

The instant complaint was filed on May 18, 2022. In advance of the July 22, 2022, Commission meeting, Commission staff recommended that the complaint be dismissed as legally insufficient. At the July 22, 2022, Commission meeting, the Commission instead voted to find the complaint legally sufficient for investigation under Article II, Section 8(g)(2), Florida Constitution,¹ and Section 112.313(6), Florida Statutes. Following the preliminary investigation, the Commission's Advocate recommended a finding of no probable cause on both allegations. At the April 21, 2023, Commission meeting, the Commission rejected the recommendation of the Commission's Advocate and found probable cause to believe the Respondent had violated both Article II, Section 8(h)(2), Florida Constitution, and Section 112.313(6), Florida Statutes, and ordered a public hearing. The minutes for that probable cause hearing are attached to this memo.

¹ This Constitutional prohibition was redesignated as Article II, Section 8(h)(2), Florida Constitution, on December 31, 2022.

The Commission transferred the matter to the Division of Administrative Hearings (DOAH), although—in an order dated April 17, 2024—DOAH relinquished jurisdiction back to the Commission. In the order, the Administrative Law Judge (ALJ) indicated that he was returning jurisdiction to the Commission as the Respondent's counsel wanted the Commission to reconsider its finding of probable cause. The ALJ did not take any position regarding the Commission's finding of probable cause. Instead, the ALJ simply indicated that, in the event the Commission "does not reconsider and reverse its finding of probable cause and the case is sent back to DOAH for a hearing, DOAH shall accept jurisdiction and reassign the case to the undersigned for a hearing."

The Respondent then filed the Motion to Reconsider Whether Probable Cause Exists with the Commission on August 27, 2024. That motion is currently before you. In the motion, the Respondent's counsel indicates he has conferred with the Commission's Advocate, who has taken "no position on [the] motion." The motion is for your consideration during public session on October 25, 2024.

You have several options for resolving the motion. Initially, you will have to decide whether to deny or grant the Motion to Reconsider Whether Probable Cause Exists. If you choose to deny the motion—meaning you uphold your initial finding of probable cause—the matter will be transferred back to DOAH for a full evidentiary hearing. However, if you decide to grant the motion—meaning you agree to reconsider your previous finding—a probable cause hearing immediately will be held.

The probable cause hearing will be handled in the same manner as any other probable cause determination. See Rule 34-5.006, F.A.C. As set out in Rule 34-5.006(6), your options will be: (1) continue the matter to allow further investigation by Commission staff; (2) find no probable cause to believe a violation has occurred, thereby concluding and dismissing the matter; (3) reaffirm your finding of probable cause and send the matter to DOAH for a full evidentiary hearing; or (4) take other action as you deem necessary to resolve the complaint, consistent with due process of law. Such "other action" can include finding probable cause of a violation but taking no further action, or finding that dismissal is warranted as the public interest will not be served by proceeding further. See § 112.324(12), Fla. Stat.

This memorandum should not be construed as recommending or advocating for any particular action by the Commission. Your legal counsel takes no position on whether the Commission should grant or deny the motion, or how you should resolve the complaint in the event that you reconsider probable cause.

**STATE OF FLORIDA
COMMISSION ON ETHICS**

Friday, April 21, 2023

*Third Floor Courtroom, First District Court of Appeal
2000 Drayton Drive
Tallahassee, Florida*

**EXECUTIVE SESSION MINUTES
Complaint No. 22-079, In re RANDALL FINE**

At 11:30 a.m. the Commission considered the above-referenced complaint with the following members present:

MICHELLE ANCHORS
WILLIAM CERVONE
DON GAETZ
GLENTON GILZEAN, JR.
JOHN GRANT
WILLIAM MEGGS
ED MOORE
JIM WALDMAN

Wengay Newton, Sr. was absent from the meeting.

The presence of a quorum was noted.

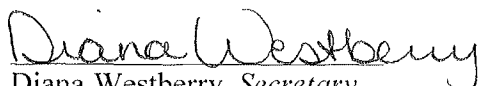
This complaint was agendaed for consideration of probable cause.

Present was Melody A. Hadley, Commission Advocate.

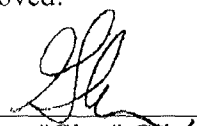
Ms. Hadley recommended that the Commission find no probable cause, regarding the allegations that the Respondent violated Article II, Section 8(h)(2), Florida Constitution, and Section 112.313(6), Florida Statutes.

Commissioner Waldman, seconded by Commissioner Gaetz, moved to reject the Advocate's Recommendation, and find probable cause. The motion carried, with Commissioner Cervone voting no.

Respectfully submitted,


Diana Westberry, *Secretary*

Approved:


Glenton "Glen" Gilzean, Jr., *Chair*

June 9, 2023
Date