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

Complaint Nos. 21-001 and 21-178 (Consolidated)

In re: Cara Higgins,

Respondent.

Response of Jolynn Reynolds in Opposition to Cara Higgins' Petition for Attorneys' Fees and Costs

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Jolynn Reynolds, through undersigned counsel, submits this response to Cara Higgins' ("Higgins") Petition for Attorneys' Fees and Costs {"Petition") which seeks to recover attorneys' fees and costs from Jolynn Reynolds ("Reynolds"), the complainant in Complaint No. 21-178. The Petition was received by the Commission on Ethics ("Commission") on August 22, 2022.

Legal Standard for Award of Attorneys' Fees and Costs

An award of attorneys' fees in favor of the person complained against in a complaint filed with the Commission on Ethics is governed by Section 112.317(7), Florida Statutes (2020), which reads, in pertinent part, as follows:

> In any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this part, the complainant shall be liable for costs plus reasonable attorney fees incurred in the defense of the person complained against, including the costs and reasonable attorney fees incurred in proving entitlement to and the amount of costs and fees.

The elements of a claim for attorneys' fees and costs under Section 112.317(7) are that: "(1) the complaint was made with a malicious intent to injure the official's reputation; (2) the person filing the complaint knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth; and (3) the statements were material." *Brown v. Comm'n Ethics,* 969 So. 2d 553, 555, 560 (Fla. 1st DCA 2007). The statute sets a very high burden for recovery of fees. *Id. at* ___.

Succinctly stated, Higgins' Petition does not meet the high burden established by Section 112.317(7) and the Petition should be denied.[1]

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[1] Portions of the Petition seeking attorneys' fees and costs against Reynolds refer to and incorporate assertions relating to the Petition for Attorneys' Fees and Costs filed against Tom Walker, the complainant in Complaint 21-001. In order to address those assertions against Mr. Walker, this response adopts and incorporates by reference Mr. Walker's Response to the Petition for Attorneys' Fees and Costs.

<u>No Intent to Injure Higgins' Reputation</u>

In Paragraphs 32-37, the Petition asserts that the complaint was filed by Reynolds with malicious intent to injure the reputation of Higgins. In support of this assertion, Higgins states that Reynolds:

- "[H]as a clear personal vendetta against Ms. Higgins stemming from Ms. Reynolds prolonged and contentious divorce proceeding with Mr. Reynolds," (Pet. ¶33.)
- Circumvented "the confidential nature of the Commission's investigation process" by making public that she had filed the Ethics complaint against Higgins. (Pet. ¶34.)
- "[F]iled these claims with an ulterior motive to harass and defame Ms. Higgins character and to exert undue influence and pressure on Mr. Reynolds to obtain an advantage in the divorce proceeding." (Pet. ¶35,)
- Included in the complaint "wild accusations that have zero relevance to Florida's Ethics laws," including creating "a hostile and uncomfortable work environment," "accusations of [Higgins'] infidelities with Mr. Reynolds], and "claims Ms. Reynolds claims that Ms. Higgins and Mr. Reynolds may have violated Chapter 838

of the Florida Statutes. tilled "Bribery: Misuse of Public Office," which falls under Florida's statutory criminal code." (Pet. ¶36,)

These assertions do not establish the malice required by Section 112.317(7). Reynolds has no personal agenda or vendetta against Higgins, even though she was humiliated by the knowledge of Higgins relationship with her husband at the time. It is worth noting that the filing of any complaint alleging a violation of the Code of Ethics for Public Officers and Employees can have the effect of injuring the reputation of a public official. The filing of a complaint is not in and of itself evidence of malice.

Reynolds filed the complaint because she reasonably believed that there were violations of ethics laws. Contrary to the assertion that Reynolds complaint was filed "to obtain an advantage in the divorce proceeding," there would be no advantage to be gained by Reynolds in the divorce proceedings. Mr. Reynolds getting work with the FKAA would be an advantage, since it may in fact increase the value of AAIS which was a marital component in the divorce.

With respect to the assertion that Reynolds circumvented the Commission's investigative process, it should be noted that Higgins was

informed by correspondence dated October 7, 2021, when she received a copy of the complaint and was informed that "[t]he Commission's procedures on confidentiality do not govern the actions of the complainant or the respondent."

The alleged "wild accusations" of misconduct implicate the jurisdiction of the Ethics Commission. As noted in the Amended Determination of Investigative Jurisdiction and Order to Investigate these allegations were not investigated because were not sufficiently pled. Specifically, "allegations of the complaint regarding the Respondent's alleged creation of a hostile working environment following an affair the Respondent had with the Complainant's husband; the Respondent's "highly offensive" participation in an FKAA meeting held via electronic means while sitting the Complainant's husband's vehicle; and the Respondent's alleged desire to scrutinize and discuss the FKAA's engineering and/or contract procurement procedures and other documentation in conjunction with FKAA Board meetings, substantively fail to indicate a possible violation of Section 112.313(6)," because they were not sufficiently alleged, "in a factual, conclusory manner" in the

complaint. *See* Amended Determination of Investigative Jurisdiction and Order to Investigate, ¶4.

Finally, allegations of a potential violation of Chapter 838 of the Florida Statutes, titled "Bribery: Misuse of Public Office," similarly implicate a potential violation of Section 112.313(2), Florida Statutes, which is the Code of Ethics equivalent of bribery.[2]

No Statements Were False or Were Made with Reckless Disregard for their Truthfulness

In Paragraphs 38-39, the Petition asserts that the complaint contained statements that were false or were made with reckless disregard for the truth. In support of this assertion, Higgins states:

- "Reynolds stated that Ms. Higgins' actions at the October 28, 2020 board meeting 'unduly influenced and created the path to provide favorable contracting activities for Jim Reynolds' and were 'a pretense to waylay the awarding of a contract to a duly qualified

[2] Section 112.313(2), Florida Statutes, provides:

> SOLICITATION OR ACCEPTANCE OF GIFTS. — No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

firm reviewed and selected based on our long-standing policy procurement procedures." (Pet. ¶39b.)

- "Reynolds stated in her complaint that the Project's architect received a phone call in September 2020 from Mr. Reynolds regarding his desire to perform the inspection services work for the Project ... whereas ... it is undisputed that Mr. Reynolds and his firm were solicited by the Project's architect in March 2019 and August to perform the inspection work on the Project." (Pet. ¶39c.)
- "Reynolds stated in her complaint that 'Cara Higgins [sic] actions and the pace of active construction pushed us into the Request for Qualifications process [and) AAIS was able to enter the bidding process at this point' ... and that Ms. Higgins actions resulted in the RFQ that allowed for Mr. Reynolds' firm to enter the bidding process...'" (Pet. ¶3dc.)
- "Reynolds stated in her complaint that the contract entered into between the FKAA and Mr. Reynolds' firm totaled $79,000 whereas the proposed contract with K2M for the same inspection services that was ultimately derailed by Ms. Higgins' 'legality diversion' only cost $47,630 ...." (Pet. ¶39e.)

It is without question that Higgins, at the October 28, 2020, created an opportunity for Mr. Reynolds' firm (AAIS) to perform inspection services on the new FKAA Administration Building. Higgins confirmed that Tom Pope informed Mr. Reynolds that Tom Walker did not want AAIS to perform inspection services on the new FKAA Administration Building. Higgins confirmed that Mr. Reynolds shared with her that he believed Mr. Walker was attempting to retaliate against him for actions he (Mr. Reynolds) took in disciplining Mr. Walker when Mr. Reynolds served as the FKAA Executive Director and Mr. Walker was a subordinate employee. Higgins confirmed that Mr. Reynolds informed her that his proposal to perform inspection services was $206,715 less than the agreement staff negotiated with K2M based on this information. (ROI ¶34.)

Higgins acknowledged she stated her concerns during the October 28, 2020 Board meeting, including questioning the legality of approving the $286,715 CCNA contract with K2M without advertising a new RFQ for the project. Higgins further acknowledged that the matter was tabled by the Board to allow FKAA staff the opportunity to determine if

approving the CCNA contract with K2M violated any Florida law. (ROI ¶35.)

In response to Board's actions on October 28, 2022, Mr. Walker made the decision to advertise a new RFQ for inspection services He directed FKAA staff to prepare for an expedited RFQ process. Only two firms responded to the RFQ and the Board selected AAIS to perform inspection services on the new FKAA Administration Building. (ROI ¶35.) While Higgins did not vote participate in the review and vote to select AAIS, there can be no dispute that Higgins, at the October 28, 2020 FKAA meeting, created the opportunity for Mr. Reynolds' firm (AAIS) to perform inspection services on the new FKAA Administration Building.

As the Commission is aware a complainant does not have the opportunity to respond to the Report of Investigation or the Advocate's Recommendation. Reynolds had a well-founded belief that violations of the ethics laws had occurred. In the past, the Selection Committee would not even evaluate, score, and rank a submittal if it was incomplete. Although the AAIS qualification package for the RFQ-0001-21 for Project Management and Inspection Services was incomplete and deficient, the Board selected AAIS. If the RFQ process would have been followed, the

AAIS package would have been deemed dis-qualified and not part of the selection process.

In Paragraphs 40-43, the Petition asserts that the complaint contained statements with respect to the failure of Higgins' to report gifts that were false or were made with reckless disregard for the truth. In support of this assertion, Higgins cites a duty to investigate the facts before filing a complaint alleging a violation of Florida's ethics laws.

Reynolds did, to the best of her ability, investigate the facts before filing a complaint. In an effort to verify whether gift reports were completed and filed as required, Reynolds first contacted the Monroe County Supervisor of Elections, who directed her to the Commission of Ethics to request gift disclosure records. Reynolds then spoke with Commission staff to determine whether the appropriate forms had been filed: Kim Holmes, Lynn Blas, and Kathy Severson. As noted in the ROI Paragraph 49, "The investigation determined the Respondent did not complete a CE Form 9 Quarterly Gift Disclosure..."

Suggestions that a cursory review of Mr. Reynolds financial records provided in the course of the divorce proceedings would show that Ms. Reynolds knew her allegations of Higgins' failure to report gifts were

false or were made with reckless disregard for the truth is disingenuous. In the course of the divorce proceedings, Mr. Reynolds was not providing mandatory discovery in a timely manner. It took Mr. Reynolds from January 29, 2020, when the Mr. Reynolds filed for divorce, to August 16, 2021, to comply with the mandatory discovery requirements. It took him 20 months to complete the mandatory discovery.

As Mr. Reynolds' responses to the mandatory discovery trickled in, it showed expenditures that matched up to Facebook posts that Mr. Reynolds was "tagged," which showed up in Reynolds' social media feed. These are only expenditures that matched up to Facebook post; there may be more. Reynolds did not have access to Ms. Higgins' financials to prove or disprove her expenses versus Mr. Reynolds.

In the context of a divorce proceeding, which involved Higgins as the other woman, was it reasonable for Reynolds to ask what gifts Higgins received from Mr. Reynolds that were not reported as required by law. Surely the Commission does not expect her to do so.

Conclusion

For the foregoing reasons Higgins' Petition does not meet the high burden established by Section 112.317(7) and the Petition should be denied.

Respectfully submitted October 3, 2022 by:

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