FLORIDA
COMMISSION ON ETHICS
AUG 22 2022
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Cara Higgins

Respondent.

Complaint Nos: 21-001 and 21-178
Consolidated

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RESPONDENT'S PETITION FOR ATTORNEY'S FEES AND COSTS

COMES NOW, Respondent, Cara Higgins, by and through undersigned counsel, and pursuant to Section 112.317(7), Florida Statutes and Rule 34-5.0291 of the Florida Administrative Code, hereby requests an award of attorney's fees and costs from Complainants, Thomas Walker and Jolynn Reynolds, and in support thereof states the following:

I. Background.

1. On January 4, 2021, Complainant Thomas Walker filed a sworn complaint against Ms. Higgins, who is a member of the Board of Directors of the Florida Keys Aqueduct Authority ("FKAA"), for purported violations of Florida's Ethics laws. In particular, Mr. Walker alleged that Ms. Higgins violated Sections 112.313(6) and 112.3187 of the Florida Statutes.

2. On January 26, 2021, Executive Director C. Christopher Anderson III issued a Determination of Investigative Jurisdiction and Order to Investigate in which Mr. Walker's allegation under Section 112.3187 was dismissed, without the need for investigation, upon a finding that it substantively failed to indicate a possible violation of the Code of Ethics over which the Commission on Ethics ("Commission") has jurisdiction. Mr. Anderson ordered an investigation into the remaining count of Mr. Walker's complaint pursuant to Section 112.313(6)—specifically, whether Ms. Higgins misused her official position as a board member

of the FKAA for the benefit of an individual connected to her in a private capacity.[1]

3. On October 5, 2021, Complainant Jolynn Reynolds filed a sworn complaint against Ms. Higgins for purported violations of Florida's Ethics laws. On February 2, 2022, Ms. Reynolds filed a sworn amendment to this complaint against Ms. Higgins for purported additional violations of Florida's Ethics laws. Between the initial complaint and amended complaint, Ms. Reynolds alleged that Ms. Higgins violated Sections 112.313(6), 112.3143(3)(a), 112.3187, 112.313(2), 112.313(4), 112.3148(4), and 112.3148(8) of the Florida Statutes.

4. On February 7, 2022, Executive Director Kerrie J. Stillman issued an Amended Determination of Investigative Jurisdiction and Order to Investigate in which several of Ms. Reynolds' allegations were dismissed, without the need for investigation, upon a finding that they substantively failed to indicate a possible violation of Sections 112.313(6) and 112.3143(3)(a) and that the Commission does not have jurisdiction over Ms. Reynolds' claim under Section 112.3187.[2] Ms. Stillman ordered an investigation into the remaining claims alleged by Ms. Reynolds—specifically, whether Ms. Higgins, in contravention of Section 112.313(6), misused her official position as a board member of the FKAA for the benefit of a business entity owed by an individual connected to her in a private capacity (Mr. Reynolds) and whether Ms. Higgins violated the gift provisions in Sections 112.313(2), 112.313(4), 112.3148(4), and 112.3148(8) through her relationship with Mr. Reynolds.

5. Commission Investigator A. Keith Powell subsequently conducted an investigation

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[1] This individual is James Reynolds. Mr. Reynolds has been separated from his wife, Complainant Jolynn Reynolds, since 2019. Currently, they are in the middle of a prolonged and contentious divorce proceeding. Ms. Higgins and Mr. Reynolds have been dating and disclosed their relationship to the FKAA board in February 2020.

[2] On November 3, 2021, Ms. Stillman issued a Determination of Investigative Jurisdiction and Order to Investigate regarding the claims raised by Ms. Reynolds in her initial complaint. However, following Ms. Reynolds' filing of the amendment to the complaint, Ms. Stillman issued the amended determination.

and Ms. Stillman signed off on his Report of Investigation ("ROI") on April 14, 2022.

6. On May 2, 2022, Commission Advocate Elizabeth A. Miller issued the Advocate's Recommendation in which she recommended a finding of "No Probable Cause" as to the eight allegations raised by Mr. Walker and Ms. Reynolds against Ms. Higgins that were deemed legally sufficient to warrant an investigation. In her recommendation, Advocate Miller emphasized the following:

a. Contrary to the unsubstantiated allegations raised by Mr. Walker and Ms. Reynolds, Ms. Higgins' "actions were within the appropriate scope of her duties" as even Ms. Reynolds acknowledged that FKAA staff expressed the same concerns that Ms. Higgins expressed, which Mr. Walker and Ms. Reynolds falsely claimed were raised by Ms. Higgins for purely personal reasons. *See* Advocate's Recommendation at p. 11.

b. Ms. Higgins recused herself from any official involvement with the business entity owned by Mr. Reynolds. *See* Advocate's Recommendation at pp. 12, 21.

c. Ms. Higgins' trips with Mr. Reynolds "included transportation, lodging, and food expenses shared by both parties. Respondent's payment of those expenses is at least equal to or more than the total value of the various aspects of the trips [paid for by Mr. Reynolds]. Respondent provided adequate consideration and has not received a gift." *See* Advocate's Recommendation at p. 19; *see also* Advocate's Recommendation at pp. 20–21 ("Respondent did not receive something of value from [Mr.] Reynolds because it was established that they shared expenses, with Respondent

paying equal or more in compensation. Thus, there was not [a] gift."); Advocate's Recommendation at p. 22 ("Since Respondent paid at least equal to her costs and, many times more than [Mr. Reynolds] during the same time frame, Respondent has not received a gift within the meaning provided herein.").

7. On July 27, 2022, the Commission dismissed Mr. Walker's and Ms. Reynolds' allegations against Ms. Higgins and found there to be no probable cause to believe Ms. Higgins violated Florida's Ethics Code.

8. Ms. Higgins is entitled to an award of her attorney's fees and costs incurred in defending against the complaints filed by Mr. Walker and Ms. Reynolds because it is evident that these individuals misused the Commission's resources and complaint procedures to advance their own personal agendas and vendettas against Ms. Higgins. *See Couch v. Comm'n on Ethics*, 617 So. 2d 1119, 1125 (Fla. 5th DCA 1993) (holding that the public official was entitled to the recovery of her attorney's fees and costs when the complainant filed his complaint "in an effort to criticize a member of the opposition party" and thereby "used the Commission for his political purposes, charging Ms. Chapin had committed a violation of Florida law, when there was no basis for his allegations").[3]

9. On February 16, 2022, Ms. Higgins, through the undersigned counsel, provided Mr. Walker and Ms. Reynolds with letters in which Ms. Higgins provided notice to them that at the

[3] Even though the FKAA assigned the undersigned counsel to represent Ms. Higgins in the defense of the complaints filed by Mr. Walker and Ms. Reynolds, an award of attorney's fees and costs under Section 112.317(7) is still proper. *See Couch*, 617 So. 2d at 1126–27 (holding that "an award of attorney's fees against a complainant . . . is not limited to situations in which a respondent contracts personally and directly with a private attorney for representation or pays fees from her own pocket," and thus, "the recovery of attorney's fees by [the public official], represented by county attorneys, for the hours expended in obtaining dismissal of Couch's complaint" was proper "because the award effectuates the legislative intent of section 112.317(8) to penalize frivolous and malicious Commission complaints").

conclusion of the Commission's investigation, she intended to seek the recovery of her costs and attorney's fees incurred in defending against the complaints filed with the Commission.

II. Legal Standard.

10. Section 112.317(7) of the Florida Statutes allows for a prevailing public officer or employee to recover the reasonable attorney's fees and costs incurred in defending against a complaint filed with the Commission.

11. In particular, Section 112.317(7) provides that a complainant shall be liable for costs plus reasonable attorney's fees when the complainant has filed the complaint "with a malicious intent to injure the reputation of [a public] 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 the Code of Ethics. Fla. Stat. § 112.317(7); *see also Osborne v. Comm'n on Ethics*, 951 So. 2d 25, 26 (Fla. 5th DCA 2007) (stating that "the use of the word 'shall' by the legislature would require an award of fees and costs to the public officer or employee complained against" upon a showing that "there were false allegations made with malicious intent or with reckless disregard of the falsity").

12. The elements of a claim for attorney's 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 on Ethics,* 969 So. 2d 553, 555, 560 (Fla. 1st DCA 2007) (holding that an award of attorney's fees and costs was proper to the prevailing respondent after the two ethics complaints were dismissed for lack of probable cause).

13. The *Osborne* case, in which the Fifth DCA held that a prevailing public official was

entitled to his attorney's fees and costs, is instructive to the instant proceeding. *See* 951 So. 2d at 27. In *Osborne*, the complainant filed a complaint with the Commission alleging that the town's mayor opposed the town's annexation of land owned by the complainant for "purely personal concerns" and his "personal investment in the Town." *See id.* at 26 (internal quotation marks omitted). Contrary to this allegation, "the evidence indicated that Mayor Osborne resisted annexation not for personal reasons or benefit, but rather because of legitimate public concerns over the manner in which the annexation was being proposed, and because of the overall effect the annexation would have had on the Town." *See id.* Additionally, it was found that material facts—namely, the mayor's purported personal monetary interest in opposing annexation—were falsely alleged by the complainant against the mayor and "that the falsity of the allegations was easily verifiable." *See id.* The Fifth DCA held that "the crux of the false material allegations" made in the complaint "was that Mayor Osborne was opposing the annexation because of some personal investment that might be diminished if [the complainant's] land was annexed into the town." *See id.* at 27. Thus, the mayor was entitled to an award of his attorney's fees and costs. *Id.*

III. <u>Analysis.</u>

14. Mr. Walker's and Ms. Reynolds' frivolous allegations meet the above elements and entitle Ms. Higgins to an award of her attorney's fees and costs in defending against such frivolous allegations.

A. Ms. Higgins is entitled to recover her attorney's fees and costs from Mr. Walker.

a. Mr. Walker had a malicious intent to impugn Ms. Higgins' reputation.

15. Initially, there is sufficient evidence to conclude that Mr. Walker filed his complaint with malicious intent to damage Ms. Higgins' reputation.

16. Mr. Walker is a disgruntled former Executive Director of the FKAA who was

removed from his position following Ms. Higgins' motion to terminate his contract, which was approved by the FKAA board by a 4-1 vote. Less than two months after he was terminated following the proceeding initiated by Ms. Higgins, Mr. Walker filed the instant complaint against Ms. Higgins. *See Brown*, 969 So. 2d at 556 (internal quotation marks omitted) (finding that an award of attorney's fees and costs was proper because the complainant "lacked a factual predicate to assert that Brown had acted corruptly, and that it was clear from the timing that [the complainant's] motivation was to impugn Brown's reputation").

17. Further, Ms. Higgins previously questioned Mr. Walker on the legality of a contract that Mr. Walker and Ms. Reynolds recommended the board approve. This contract was a proposed contract between the FKAA and K2M in which K2M would perform the inspection services work on the FKAA's undertaking of construction on a new Administration Building that will cost $14 million ("Project"). Thus, Mr. Walker was unhappy with Ms. Higgins for faithfully executing her duties as a board member to ensure that the FKAA did not violate Florida law or cost the ratepayers an unnecessary $206,715 as another firm offered to perform the inspection services work for significantly less than K2M.

18. Lastly, Mr. Walker has a previous negative history with Mr. Reynolds, which included Mr. Reynolds suspending Mr. Walker when Mr. Reynolds served as the FKAA's Executive Director and Mr. Walker was a FKAA employee due to Mr. Walker's improper use of FKAA property for his private engineering business. As Ms. Higgins is now dating Mr. Reynolds, Mr. Walker took the opportunity to personally attack Ms. Higgins due to his bad blood with Mr. Reynolds.

19. Clearly, Mr. Walker had no other purpose in filing his complaint other than to harass Ms. Higgins and damage her reputation.

b. Mr. Walker made statements in his complaint that are false or were made with reckless disregard for their truth.

20. It is also apparent that Mr. Walker filed his malicious complaint with false statements or reckless disregard for the truth.

21. The basis of Mr. Walker's complaint is that "Ms. Higgins orchestrated a process resulting in an inappropriate award" of an inspection services contract to Mr. Reynolds' firm. *See* Walker Complaint at p. 1. Based upon the results of the Commission's investigation, it is clear that Mr. Walker recklessly accused Ms. Higgins of this inappropriate conduct as Advocate Miller found that Ms. Higgins' "actions were within the appropriate scope of her duties" and Ms. Higgins' "actions seemed reasonable and in the best interests of the FKAA and the taxpayers." *See* Advocate's Recommendation at p. 11. In fact, Advocate Miller supported her conclusion on grounds that Ms. Reynolds stated that "even staff was concerned 'whether they were required to advertise a new RFQ for services'"—which was the same concern expressed by Ms. Higgins—and Ms. Higgins did not have any official involvement in the matter affecting the FKAA's contract with Mr. Reynolds' firm. *See* Advocate's Recommendation at p. 11 (quoting ROI at ¶ 24). However, Mr. Walker's disdain for Ms. Higgins and Mr. Reynolds caused him to recklessly accuse Ms. Higgins of violating her ethical duties in an attempt to benefit Mr. Reynolds.

22. In support of his reckless accusation described above, Mr. Walker relied upon several other false or reckless statements that he made in his complaint.

23. First, Mr. Walker stated that at the October 28, 2020 board meeting, Ms. Higgins exercised "undue influence over FKAA Board Members, resulting in their acquiescence in rejecting the proposed contract." *See* Walker Complaint at p. 1. This allegation includes several reckless statements and misrepresentations.

a. Initially, Ms. Higgins did not exert any "undue influence" over the other

board members. Rather, she questioned FKAA staff about a contract procurement policy that she reasonably believed violated Florida law, which Advocate Miller found was "reasonable and in the best interests of the FKAA and the taxpayers" as Ms. Higgins has a duty to ensure that all contracts entered into by the FKAA are legal and do not cost more money than necessary. *See* Advocate's Recommendation at p. 11. By raising her concerns at the board meeting, Ms. Higgins faithfully carried out her duty as a public official. In fact, similar to Ms. Higgins, two other board members expressed their concerns about the proposed contract at the board meeting. Specifically, Board Chairman Robert Dean questioned Mr. Walker as to why he recommended that the FKAA move forward with the contract with K2M when Mr. Reynolds' firm offered to do the inspection work for $206,715 less than the proposed contract with K2M. Further, Chairman Dean stated at the meeting that if the proposed contract with K2M was put up for a vote at the meeting, he would have voted against the proposal. Next, board member Richard Toppino moved to table the board's approval of the inspection services contract recommended by Mr. Walker and Ms. Reynolds. Moreover, Ms. Reynolds told Investigator Powell that prior to September 29, 2020—i.e., one month prior to the subject board meeting where Ms. Higgins first expressed her concerns about the proposed contract—Mr. Toppino questioned why Mr. Reynolds' firm was not permitted to perform the inspection work. *See* ROI at ¶ 25. Critically, this is irrefutable evidence that Mr. Toppino—and not Ms. Higgins—was the

first board member who questioned the process used by Mr. Walker and Ms. Reynolds in proposing the contract with K2M. Thus, it is evident that Ms. Higgins did not exert any "undue influence" over the other board members as they had their own independent concerns about the contract recommended by Mr. Walker and Ms. Reynolds.

b. Additionally, contrary to Mr. Walker's allegation, the board members did not reject the proposed contract with K2M. Mr. Toppino moved the board to table the issue and Ms. Higgins seconded the motion, which was intended to allow FKAA counsel and staff the opportunity to determine whether approving the contract would comply with Florida law. In short, the board provided Mr. Walker and Ms. Reynolds with an opportunity to explain why Ms. Higgins' interpretation of the law was wrong and why Mr. Walker's was right. However, instead of trying to support their position and then bring the contract back to a vote with the board, Mr. Walker made the decision shortly thereafter to open up the contract for bidding, implicitly conceding that Ms. Higgins raised valid concerns at the board meeting of approving the contract without it first going out for bid. Thus, Mr. Walker's allegation that Ms. Higgins' actions resulted in the board's rejection of the proposed contract is patently false as it was Mr. Walker who opened up the bidding on the contract, which resulted in the proposed contract never being placed for a vote with the board.

24. Second, Mr. Walker stated in his complaint that the Project's architect received an "unsolicited price proposal" on September 28, 2020 from Mr. Reynolds' firm for providing the

inspection services work. *See* Walker Complaint at p. 3. However, such claim is entirely false as neither Mr. Reynolds nor his firm initiated contact seeking to perform work on the Project. Rather, following more than one request from the Project's architect to place a bid on the Project, Mr. Reynolds provided the architect with a proposal for his firm to perform the inspection services work on the Project. *See* Ms. Higgins' Response to Advocate's Recommendation at Bates Stamp 077–085. Thus, Mr. Reynolds and his firm were solicited by the Project's architect in March 2019 and August 2020 and only provided a proposal for the inspection work following such solicitation and back and forth communications between the architect's office and Mr. Reynolds' firm. Clearly, Mr. Walker made this false allegation in the complaint in a malicious effort to make it appear that Ms. Higgins and Mr. Reynolds had some sort of scheme to get Mr. Reynolds' firm the inspection services work on the Project. In fact, the only individuals taking part in any scheme were Mr. Walker and Ms. Reynolds who discriminated against Mr. Reynolds due to a personal vendetta and conspired together to use K2M in violation of Florida law.

25. Third, Mr. Walker stated in his complaint that the FKAA executive staff received an email from Ms. Higgins two hours prior to the October 28, 2020 board meeting in which Ms. Higgins requested certain documents be provided to board members prior to the meeting. *See* Walker Complaint at p. 4. However, what Mr. Walker recklessly omits from the complaint is that documents show that Ms. Higgins first made her request for these documents on the day before the meeting. *See* Ms. Higgins' Response to Advocate's Recommendation at Bates Stamp 089–090. Despite Mr. Walker's veiled attempt to create an impression that Ms. Higgins made a last-second request for documents, the true facts show that Ms. Higgins made a timely request for documents so that she and the other board members could faithfully carry out their duties as board members when considering whether to approve a proposed contract.

26. Fourth, Mr. Walker stated in his complaint that the FKAA's procurement procedure was "considered by the Auditor General and looked at by the Attorney General years ago and no problem was noted." *See* Walker Complaint at p. 5. Significantly, this statement made by Mr. Walker in his complaint is contradicted by his interview with Investigator Powell in which Mr. Walker stated that two state agencies have questioned the FKAA in the past about the same practice that Ms. Higgins questioned at the board meeting—specifically, whether the FKAA violated Section 287.055 of the Florida Statutes by not placing the Project's inspection services contract up for bid—and that the FKAA and the two state agencies have "agreed to disagree." *See* ROI at ¶¶ 16, 18. In fact, a 2006 report for the Auditor General found that the FKAA "used continuing contracts with engineering firms for projects over $1 million, contrary to Section 287.055, Florida Statutes, which requires a competitive selection process." *See* Ms. Higgins' Response to Advocate's Recommendation at Bates Stamp 102–103.[4] It is clear that Mr. Walker told Investigator Powell that two state agencies have expressed problems with the procurement policy that Ms. Higgins questioned, which is corroborated by the 2006 report from the Auditor General, and shows that his statement in the complaint that the agencies showed "no problem" with the FKAA's procurement procedures amounts to a blatant falsehood.

27. Lastly, Mr. Walker stated in his complaint that "Ms. Higgins discussed with FKAA Counsel Bob Feldman and FKAA Internal Auditor Tim Esquinaldo that FKAA could not proceed with the selection of K2M based on the established procedure and needed to advertise for these services," and thus, the FKAA "published another RFQ which was published on November 6, 2020 for inspection services." *See* Walker Complaint at ¶¶ 6–7. There are two critical falsehoods

[4] The Project costs $14 million, which greatly exceeds the $4 million threshold for a continuing contract now present in Section 287.055.

with this allegation.

a. Ms. Higgins never stated that the FKAA should not proceed with the proposed contract with K2M. Rather, she questioned the process that Mr. Walker and Ms. Reynolds utilized to present the proposed contract to the board for its approval. In response, Ms. Higgins solely asked for Mr. Walker and Ms. Reynolds to provide research and additional information—not a RFQ—to the board so that the members could determine whether approving the proposed contract would violate Florida law.

b. Additionally, the FKAA did not publish "another" RFQ (Request for Qualifications) as alleged by Mr. Walker. Rather, this was the first RFQ issued for the Project's inspection services work as that was the concern raised by Ms. Higgins at the October 28, 2020 board meeting—specifically that Mr. Walker and Ms. Reynolds recommended that the FKAA enter into a contract with K2M without first placing the contract out for a bid.

28. Thus, similar to how the Fifth DCA found that the public official was entitled to recover his attorney's fees and costs in *Osborne* due to "the crux of the false material allegations" relating to the mayor's opposition to the annexation of land due to his purported personal investment, Ms. Higgins is entitled to recover her attorney's fees and costs due to the false allegations raised by Mr. Walker claiming that Ms. Higgins challenged the proposed contract with K2M because of her personal relationship with Mr. Reynolds. *See Osborne*, 951 So. 2d at 27.

c. Mr. Walker's false and reckless allegations were material to a violation of the Ethics Code.

29. Finally, it is beyond legitimate dispute that Mr. Walker's false and reckless allegations were material in nature.

30. Mr. Walker's material misrepresentations, which centered around Ms. Higgins' alleged "undue influence over FKAA Board Members" in an attempt to provide a benefit to Mr. Reynolds (*see* Walker Complaint at p. 1), necessitated an investigation by the Commission before it could be determined that there was no probable cause to believe that Ms. Higgins violated any provision of the Ethics Code.

31. As a result, Ms. Higgins was forced to participate in the investigation, incurring attorney's fees and costs spent in defense of Mr. Walker's false and reckless accusations.

B. Ms. Higgins is entitled to recover her attorney's fees and costs from Ms. Reynolds.

a. Ms. Reynolds had a malicious intent to impugn Ms. Higgins' reputation.

32. Initially, there is sufficient evidence to conclude that Ms. Reynolds filed her initial complaint and amendment with malicious intent to damage Ms. Higgins' reputation.

33. Ms. Reynolds' frivolous claims in the complaint and the amendment show that she has a clear personal vendetta against Ms. Higgins stemming from Ms. Reynolds' prolonged and contentious divorce proceeding with Mr. Reynolds, who is currently dating Ms. Higgins.

34. In establishing Ms. Reynolds' malicious motive to harass Ms. Higgins, the Commission need look no further than Ms. Reynolds' circumvention of the confidential nature of the Commission's investigation process. In particular, prior to the Commission's final determination in this matter, Ms. Reynolds told several people in the small Key West community where Ms. Higgins resides and works that Ms. Reynolds filed ethics complaints against Ms. Higgins. Ms. Higgins, as a practicing attorney, prides herself on her reputation and her ethics. The fact that Ms. Reynolds paraded through town publicizing the complaints that she filed against Ms. Higgins—notably, before the Commission had a chance to fully investigate and issue a determination as to the allegations—is not only inappropriate and in contravention of the

confidential nature of complaints, but it is entirely unethical on the part of Ms. Reynolds and evinces her nefarious motive in filing the complaints against Ms. Higgins. Moreover, as if simply publicly discussing the complaints that she filed against Ms. Higgins was not enough, Ms. Reynolds disclosed her filing of the complaints in, and even attached the cover pages of her complaints to, a baseless whistle-blower complaint that she filed with the FKAA on February 16, 2022.[5] By including this information in a public record, Ms. Reynolds once again violated Ms. Higgins' right to confidentiality of the complaints until the exemption expired according to Florida law.

35. Ms. Reynolds' actions in disclosing the filing of the complaints against Ms. Higgins clearly establishes Ms. Reynolds' malicious and vindictive intent to damage Ms. Higgins' reputation due to Ms. Higgins' personal relationship with Ms. Reynolds' estranged husband. Clearly, Ms. Reynolds did not file these claims so that the Commission could investigate a purported violation of the Code of Ethics. Rather, Ms. Reynolds filed 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.

36. The allegations in Ms. Reynolds' complaint and amendment also evidence her malicious motive of damaging Ms. Higgins' reputation as they are replete with wild accusations that have zero relevance to Florida's Ethics laws.

a. First, Ms. Reynolds initiates her complaint by stating that "Cara Higgins has created, through her actions and personal decisions, a hostile and uncomfortable work environment for me at the FKAA." *See* Reynolds Complaint at p. 1. Ms. Reynolds continued that "[a] number of [Ms.

[5] Ms. Reynolds' whistle-blower grievance was also dismissed as unfounded by FKAA staff after an investigation.

Higgins'] acts have been offensive [and] intimidating." *See* Reynolds Complaint at p. 1.

b. Second, Ms. Reynolds accuses Ms. Higgins of "infidelities" with Mr. Reynolds. *See* Reynolds Complaint at p. 2. Despite admitting that there "is no Statute prohibiting the personal relationship which has evolved between Cara Higgins and Jim Reynolds," Ms. Reynolds spends nearly an entire page of her complaint alleging that Ms. Higgins and Mr. Reynolds "were deceptive and personally involved long before a public perception window of acceptability existed." *See* Reynolds Complaint at pp. 9–10. Ms. Reynolds even goes so far as saying that "[t]he reality of Infidelity of both Cara Higgins and Jim Reynolds as well as probable Adultery is a given fact to me at this point." *See* Reynolds Complaint at p. 9.

c. Lastly, Ms. Reynolds claims that Ms. Higgins and Mr. Reynolds may have violated Chapter 838 of the Florida Statutes, titled "Bribery; Misuse of Public Office," which falls under Florida's statutory criminal code. *See* Reynolds Amendment at p. 2.

37. The above cited allegations have no relevance to Florida's Ethics laws and thus do not even contemplate matters within the Commission's jurisdiction. Ms. Reynolds' grossly deficient and irrelevant allegations and blatant misrepresentations as outlined below, demonstrate that Ms. Reynolds had no other purpose in filing her complaint and amendment other than to harass Ms. Higgins and damage her reputation. The Commission should not allow for Ms. Reynolds to use its time and resources as a forum for divorce court.

b. Ms. Reynolds made statements in her complaints that are false or were made with reckless disregard for their truth.

38. It is also apparent that Ms. Reynolds filed her malicious complaint and amendment with false statements or reckless disregard for the truth.

39. Similar to Mr. Walker's complaint, the basis of Ms. Reynolds' initial complaint is her accusation that there was "favored contracting as a direct result produced from Cara Higgins [sic] influences and actions as a FKAA Board member coupled with her personal relationship with Jim Reynolds." *See* Reynolds Complaint at p. 11; *see also* Reynolds Complaint at p. 2 (stating that Ms. Higgins' actions have led to "inappropriate and favored contracting activities of the FKAA"); Reynolds Complaint at p. 12 (stating that Mr. Reynolds' receipt of favorable treatment "due to his personal relationship with Cara Higgins is quite apparent"). For the same reasons discussed above as to why Mr. Walker's similar allegation was recklessly made, it is clear that Ms. Reynolds also recklessly accused Ms. Higgins of this inappropriate conduct.

a. In support of her reckless accusation described above, Ms. Reynolds relied upon several other false or reckless statements that she made in her complaint.

b. First, Ms. 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 firm reviewed and selected based on our long-standing policy procurement procedures." *See* Reynolds Complaint at p. 10; *see also* Reynolds Complaint at p. 13 (stating that the undue influences of Ms. Higgins provide "a continuing favorable contracting environment for Jim Reynolds for his current contract and

future contracting endeavors"). For the reasons previously discussed with Mr. Walker's undue influence claim, Ms. Reynolds recklessly accused Ms. Higgins of exerting an undue influence over the other board members.

c. Second, Ms. 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. *See* Reynolds Complaint at p. 3. Similar to how Mr. Walker recklessly accused Mr. Reynolds of submitting an unsolicited price proposal, Ms. Reynolds recklessly attempts to imply that it was Mr. Reynolds who initiated contact to perform work on the Project, whereas as discussed above, it is undisputed that Mr. Reynolds and his firm were solicited by the Project's architect in March 2019 and August 2020 to perform the inspection work on the Project.

d. Third, Ms. 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." *See* Reynolds Complaint at p. 11. As discussed above with Mr. Walker's complaint, Ms. Higgins had absolutely zero involvement with the FKAA issuing a RFQ. Rather, the board tabled its vote on the proposed contract with K2M by providing Mr. Walker and Ms. Reynolds with an opportunity to research the concerns raised by Ms. Higgins and then re-present the contract with the results of their findings to the board for a vote. However, it was Mr. Walker who unilaterally decided not to bring the proposed contract back to the board for a vote as he decided to open up the

contract for bidding. Thus, Ms. Reynolds' allegation that Ms. Higgins' actions resulted in the RFQ that allowed for Mr. Reynolds' firm to enter the bidding process is entirely false as it was Mr. Walker who opened up the bidding on the contract, which allowed for all companies, including Mr. Reynolds' firm, to submit a bid. Curiously, K2M did not submit a bid to perform the inspection services work on the Project.

e. Lastly, Ms. 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. *See* Reynolds Complaint at p. 12. This allegation recklessly ignores two critical components. First, the total contract proposed for K2M amounted to $286,715 because it included duplicative construction management services that were already being provided by the Project's architect. Second, the proposed contract with K2M, which Ms. Reynolds negotiated, did not require K2M to deliver a Certificate of Occupancy, which the FKAA board originally directed the staff to procure from the inspection services vendor, or require K2M to have a licensed Building Code Administrator perform the inspections. Thus, Ms. Reynolds' allegation that the proposed contract with K2M for inspection services was cheaper than the contract with Mr. Reynolds' firm is misleading and recklessly made in a veiled attempt to bolster Ms. Reynolds' frivolous and malicious complaints against Ms. Higgins.

f. Thus, similar to how the Fifth DCA found that the public official was entitled to recover his attorney's fees and costs in *Osborne* due to "the crux of the false material allegations" relating to the mayor's opposition to the annexation of land due to his purported personal investment, Ms. Higgins is entitled to recover her attorney's fees and costs due to the false allegations raised by Ms. Reynolds claiming that Ms. Higgins challenged the proposed contract with K2M because of her personal relationship with Mr. Reynolds. *See Osborne*, 951 So. 2d at 27.

40. Additionally, the basis of Ms. Reynolds' amendment is that Ms. Higgins violated the gift provisions of Florida's Ethics Law "through her associations and activities with Jim Reynolds." *See* Reynolds Amendment at p. 8.[6] Based upon the results of the Commission's investigation, it is clear that Ms. Reynolds recklessly accused Ms. Higgins of this inappropriate conduct as Advocate Miller found that Ms. Higgins' trips with Mr. Reynolds "included transportation, lodging, and food expenses shared by both parties. Respondent's payment of those expenses is at least equal to or more than the total value of the various aspects of the trips [paid for by Mr. Reynolds]. Respondent provided adequate consideration and has not received a gift." *See* Advocate's Recommendation at p. 19; *see also* Advocate's Recommendation at pp. 20–21 ("Respondent did not receive something of value from [Mr.] Reynolds because it was established above that they shared expenses, with Respondent paying equal or more in compensation. Thus, there was not [a] gift."); Advocate's Recommendation at p. 22 ("Since Respondent paid at least equal to her costs and, many times more than [Mr. Reynolds] during the same time frame,

[6] In the amendment, Ms. Reynolds again claims that Ms. Higgins' "influences facilitated a . . . Favored Contracting to a Person and Firm of which Cara Higgins is involved in a personal relationship." *See* Reynolds Amendment at p. 2. For the reasons addressed immediately above, this allegation was recklessly made by Ms. Reynolds.

Respondent has not received a gift within the meaning provided herein.").

a. In support of her reckless accusation described above, Ms. Reynolds relied upon other false or reckless statements that she made in her amendment.

b. First, Ms. Reynolds stated that "Cara Higgins and Jim Reynolds frequent the Key West Yacht Club where the various Meals and Drinks are incurred under [Mr. Reynolds' corporate] membership paid for by Reynolds Engineering Services." *See* Reynolds Amendment at p. 5. As concluded by Advocate Miller, "the questioned expenditure represents [Mr. Reynolds'] quarterly charges which includes his monthly membership fee, food, and drinks purchased." *See* Advocate's Recommendation at pp. 17–18. Significantly, Advocate Miller continued that Ms. Higgins "has maintained her own membership at the Club for the past 15 years, which she pays herself. Respondent's quarterly charges during the same time period totaled $2,430.75" whereas Mr. Reynolds' quarterly charges totaled $267.87 less. *See* Advocate's Recommendation at pp. 17–18 (internal citation omitted). Contrary to Ms. Reynolds' false allegation, Ms. Higgins clearly pays for her own membership fee and her own food and drinks that she consumes at the Key West Yacht Club.

c. Second, Ms. Reynolds stated in the amendment that there was a quid pro quo[7] between Ms. Higgins and Mr. Reynolds based upon Ms. Higgins' acceptance of gifts in exchange for favored contracting to Mr. Reynolds'

[7] In the amendment, Ms. Reynolds referred to this as a "Quid Quo Pro." *See* Reynolds Amendment at p. 8. Presumably, she meant a "quid pro quo."

firm. *See* Reynolds Amendment at p. 8. This reckless allegation flies in the face of Advocate Miller's recommendation as she found that Ms. Higgins did not accept anything of value from Mr. Reynolds in exchange for Ms. Higgins influencing a vote to benefit Mr. Reynolds. *See* Advocate's Recommendation at pp. 20–21. In particular, Advocate Miller determined that Ms. Higgins did not solicit or accept a gift from Mr. Reynolds and that Ms. Higgins "recused herself from any official involvement with" Mr. Reynolds. *See* Advocate's Recommendation at pp. 20–21, 22.

d. In *Brown*, the First DCA held that a complainant exhibits a reckless disregard for the truth when filing an ethics complaint "without an investigation of the facts." *See Brown*, 969 So. 2d at 557. The first complainant in *Brown* came to the "grave conclusion about Brown's conduct without checking into the facts" and had he investigated the matter, he would have come across public records that would have demonstrated the meritless nature of his claim. *See id.* at 555. Similarly, the second complainant did not investigate any of the facts of his complaint and had he done so, his claim would have been readily exposed as false with very little inquiry. *See id.* Thus, the court concluded that "[t]here is no doubt that [the complainants] acted 'recklessly,' as . . . [t]hey charged Brown with public corruption without any investigation of the facts. Although they submitted their complaints under oath, they had no legitimate reason to believe that the accusations they made against Brown were true." *See id.* at 557.

e. Here, Ms. Reynolds failed to adhere to *Brown's* rule of law that prior to

making a complaint with the Commission, the complainant has a responsibility to investigate the matter and check into the facts. *See id.* at 555 ("However, [the complainant] came to this grave conclusion without checking the facts. Had he investigated the matter, he would have learned that the exemption was reinstated because it had been removed without proper notice. Records available in the tax collector's office explained that the exemption had been removed in error."). Rather, Ms. Reynolds' recklessness in filing her amendment against Ms. Higgins is nearly identical to the recklessness of the complainants in *Brown*. Namely, Ms. Reynolds based her allegations solely on Mr. Reynolds' financial documents that she obtained through discovery in her divorce proceeding and her review of Mr. Reynolds' Facebook profile. *See* Reynolds Amendment at p. 3. Critically, Ms. Reynolds failed to consider any of the expenses paid for by Ms. Higgins during the same trips, that several of Mr. Reynolds' purchases did not even involve a purchase for Ms. Higgins,[8] and that the value of a gift under the Code of Ethics excludes taxes and gratuities (*see* Fla. Stat. § 112.3148(7)(a)). Ms. Reynolds' failure to conduct even the most basic research or investigation into Ms. Higgins' own expenses during the same time period and the details surrounding Mr. Reynolds' expenses in order to

[8] A cursory investigation by Ms. Reynolds would have revealed that some of Mr. Reynolds' purchases that Ms. Reynolds included in the amendment in her attempt to show that Ms. Higgins received an impermissible gift from Mr. Reynolds included purchases made by Mr. Reynolds for his children (including a bottle of "Poop Spray" for his teenage son) and for himself (including a pair of men's shoes and a golf shirt). Notably, Ms. Reynolds could have easily investigated this matter as she has been in active litigation with Mr. Reynolds since 2019 and has every possible discovery tool at her disposal to determine the exact nature of Mr. Reynolds' expenses. She chose to ignore the various discovery mechanisms that were available to her to investigate this matter and chose instead to file baseless accusations against Ms. Higgins with the Commission.

ascertain the truth of her allegation before filing a sworn complaint with the Commission illustrates a reckless disregard for the truth. *See Couch*, 617 So. 2d at 1120, 1125 (holding that the public official was entitled to the recovery of her attorney's fees and costs because the complainant "made no effort to obtain information to substantiate his Complaint"); *In re: Diane V. Bendekovic*, Complaint No. 10-152, COE Final Order No. 11-138, 2011 FL Comm. Ethics LEXIS 65, at *8 (Fla. Comm'n on Ethics Oct. 26, 2011) (finding that the complainant's "failure to sufficiently investigate his allegations against Bendekovic prior to filing the complaint against her . . . constituted reckless disregard for the truth" and entitled the public official to the recovery of her attorney's fees and costs). As found by Advocate Miller, a simple review of the charges incurred by both Ms. Higgins and Mr. Reynolds during these trips, rather than a cursory view of Mr. Reynolds' bank statements as was done by Ms. Reynolds, reveals that there was no gift exchange from Mr. Reynolds to Ms. Higgins during these trips because Ms. Higgins provided equal, and in fact greater, consideration during the trips. *See* Advocate's Recommendation at pp. 19–22. Thus, Ms. Reynolds failed to make any "independent effort to verify any of the facts in [her] ethics complaint and . . . [she] had recklessly disregarded whether the complaint contained false allegations." *See Brown*, 969 So. 2d at 556 (internal quotation marks omitted).

c. Ms. Reynolds' false and reckless allegations were material to a violation of the Ethics Code.

41. Finally, it is beyond legitimate dispute that Ms. Reynolds' false and reckless

allegations were material in nature.

42. Ms. Reynolds' material misrepresentations, which centered around Ms. Higgins' alleged undue influence of the FKAA board members with an intent to provide a benefit to Mr. Reynolds (*see* Reynolds Complaint at p. 10) and Ms. Higgins' impermissible receipt of gifts from Mr. Reynolds (*see* Reynolds Amendment at p. 8), necessitated an investigation by the Commission before it could be determined that there was no probable cause to believe that Ms. Higgins violated any provision of the Ethics Code.

43. As a result, Ms. Higgins was forced to participate in the investigation, incurring attorney's fees and costs spent in defense of Ms. Reynolds' false and reckless accusations. This does not include Ms. Higgins' lost time and wages that she suffered as a result of defending against these allegations, as well as the damage to her reputation in her community.

IV. <u>Conclusion.</u>

44. Mr. Walker and Ms. Reynolds abused the Commission and its investigative process as a vehicle to recklessly assert personal attacks against Ms. Higgins and retaliate against her for speaking out against a contract recommended by them, voting to terminate Mr. Walker's employment with the FKAA, and dating Ms. Reynolds' estranged husband.

45. Mr. Walker and Ms. Reynolds filed their complaints with the malicious intent to injure Ms. Higgins' reputation and did so by making reckless allegations without regard to the truth and that were material in nature.

46. As the First DCA noted in *Brown*, when Mr. Walker and Ms. Reynolds chose to file their false and reckless accusations with the Commission, "they drew [Ms. Higgins] into the legal system involuntarily, and [she] had no choice but to defend [herself]." *See Brown,* 969 So. 2d at 560.

47. Ms. Higgins merely seeks a recovery of her defense costs and fees in response to these baseless complaints, in addition to the associated fees incurred in pursuing the same. Through the date of filing this Petition for Attorney's Fees and Costs, Ms. Higgins has incurred $46,530.00 in attorney's fees and $1,779.16 in costs in this matter.

48. Denying Ms. Higgins' legally sufficient request for fees and costs would amount to the Commission making a policy decision that would encourage the public to bring any and all complaints without any basis in law or fact against any public officer or official. This would be contrary to Section 112.317(7) and Rule 34-5.0291, which are intended to deter the public from filing frivolous ethical complaints and wasting government resources to investigate such claims. Ms. Higgins seeks relief in the form of recovery of her attorney's fees and costs in a hope to chill Mr. Walker, Ms. Reynolds, and other individuals from filing baseless ethical violations injurious to her and her colleagues' reputations.

WHEREFORE, Ms. Higgins respectfully requests that the Commission grant her Petition for Attorney's Fees and Costs.

Respectfully submitted this August 22, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has served via Regular United States Mail to the following on August 22, 2022:

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