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

In re: Mary C. Estime-Irvin,

Respondent. **Complaint No. 18-174**

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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, Mary C. Estime-Irvin, serves as a member of the North Miami Personnel Board, as an alternate board member of the North Miami Board of Adjustment, and a committee member for the North Miami Community Redevelopment Agency Advisory Committee.

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(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 December 18, 2018.

ALLEGATION

Respondent is alleged to have violated Section 112.3145(8)(c), Florida Statutes, by willfully failing or refusing to timely file her 2016 CE Form 1, "Statement of Financial Interests."

APPLICABLE LAW

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(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 as a board member of the North Miami Personnel Board (her term expires September 22, 2020), as an alternate board member of the North Miami Board of Adjustment (her term expires May 28, 2019), and as a committee member for the North Miami Community Redevelopment Agency Advisory Committee (her term expires May 21, 2019), positions which require the annual filing of a CE Form 1, "Statement of Financial Interests." (ROI 1)

Respondent was required to file a 2016 CE Form 1, within 60 days of September 1, 2017, the date automatic fines of $25 per day began to accrue. §112.3145(7)(f), Fla. Stat. (ROI 2) As of November 1, 2017, Respondent accrued the maximum fine ($1,500) authorized. §112.3145(7)(f), Fla. Stat. (ROI 2) The Commission on Ethics (Commission) initiated an investigation based on the accrual of the maximum fine and failure to file an annual statement of financial interests. §112.3145(8)(c), Fla. Stat. (ROI 3)

Respondent had five different addresses in the past seven years. (ROI 5) The following contacts were attempted to inform Respondent of her obligation to file a 2016 form. (ROI 4, 5, 6)

May 30, 2017: Miami-Dade Supervisor of Elections (SOE) mailed a blank 2016 CE Form 1, to Respondent at P.O. Box 613008, North Miami, FL, 33261. (ROI 4)

June 30, 2017: SOE sent a second notice to Respondent's aforementioned post office box, via certified mail, which was returned to the SOE as "undeliverable as addressed, unable to forward." (ROI 4)

August 18, 2017: Commission mailed a courtesy post card to Respondent's aforementioned post office box to remind her of her obligation to file her 2016 form. (ROI 6)

August 25, 2017: Commission staff left a voicemail message at the telephone number it had on file for Respondent, warning her of the impending $25 per day fine if she did not file by September 1, 2017. (ROI 6)

September 7, 2017: Commission mailed Respondent a courtesy notice informing her that an automatic fine had begun to accrue. (ROI 6)

March 1, 2018: Respondent was sent, via certified mail, a Notice of Assessment of Automatic Fine with instructions on how to appeal. (ROI 6) On June 7, 2018, the U.S. Postal Service returned the certified mailing as "unclaimed." (ROI 6)

May 14, 2018: Respondent was mailed a Final Notice of Assessment of Automatic Fines. (ROI 6)

August 1, 2018: Respondent was mailed a Notification of Issuance of Default Final Order. (ROI 6)

August 24, 2018: Commission staff e-mailed Respondent to let her know the grace period was ending for filing her 2017 CE Form 1 and that automatic fines would accrue. (ROI 8) Respondent followed up by calling the Commission staff to discuss her 2017 CE Form 1, at which time Commission staff advised her regarding the previous year's fine (2016), how to pay it, and where to obtain the forms for filing, to which Respondent stated that she would take care of it right away. (ROI 8)

August 24, 2018: Commission only received Respondent's 2017 CE Form 1. (ROI 8) Respondent stated that she e-mailed both her 2016 and 2017 CE Form ls on this date; however, Commission records indicate that it only received Respondent's 2017 CE Form 1. (ROI 8) Respondent was given 30 days to file an appeal. (ROI 8)

August 28, 2018: Commission staff updated Respondent's address to 155 NE 131 Street, North Miami, FL, 33161. (ROI 5)

October 4, 2018: Respondent was contacted via e-mail advising her to contact the Commission as soon as possible, regarding this instant ethics complaint. (ROI 9) Respondent stated by telephone that she was interested in filing an appeal on the grounds that she never received notices from the Commission or the SOE's office. (ROI 9) She stated that she no longer had the post office box where all the prior notices were sent. (ROI 9) She disclosed that in past years, she either did not know she had to file or did not remember to file because she was not always active on all the boards. (ROI 9)

December 3 and 4, 2018: Respondent was contacted via e-mail using three different e-mail addresses. (ROI 10) Respondent was given until the close of business on Thursday, December 6, 2018, to make any additional statements regarding her failure to timely file her 2016 CE Form l. (ROI 10) The Commission's investigator telephoned Respondent multiple times but was unable to make contact or leave a voice message at either of the following telephone numbers: 786-228-5121, which had a busy signal; and 305-244-5954, which had a full voicemail box. (ROI 10) All telephone calls and e-mails went unanswered. (ROI 10)

Commission records show that Respondent did not file CE Form ls for 2010 and 2011. (ROI 7) She accrued the maximum fine for each year and the debts were subsequently referred to a collection agency. (ROI 7) Respondent accrued a $1,050 fine for the late filing of her 2014 CE Form 1, which was received by the Commission on October 13, 2015. (ROI 7) As of the date of the Commission's investigation, Respondent still had not submitted her 2016 CE Form 1, nor had she paid any of her fines. (ROI 7)

The facts establish that Respondent did not timely file her financial disclosure form for 2016 and that the maximum fine accrued. Indeed, Respondent had not filed her 2010 and 2011 forms either as of the date of the Commission's investigation. There can be no doubt that Respondent knew or should have known of the need to file her 2016 form in a timely manner given her involvement in filing, albeit somewhat late, her 2014 form. Respondent's failure to comply with the reporting requirement in 2010 and 2011 and being sanctioned for those failures and again in 2016, after being notified more than once, certainly demonstrates a purposeful choice not to file the form. Respondent's desire not to take the time, trouble, and effort to complete the form with the knowledge that it was required by a certain date demonstrates disobedience of the filing requirement. Consequently, Respondent's failure to file her 2016 form was "willful."

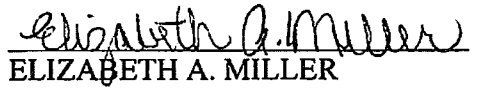
Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3145(8)(c), Florida Statutes.

RECOMMENDATION

It is my recommendation that,

There is probable cause to believe that Respondent violated Section 112.3145(8)(c), Florida Statutes, by willfully failing or refusing to timely file her 2016 CE Form 1, "Statement of Financial Interests."

Respectfully submitted this 3rd day of January, 2019.



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