STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: Bryan Lober,

DOAH Case No. 26-2084EC

Respondent.
_____/

ADVOCATE'S PROPOSED RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on June 29, 2026, via Zoom before Administrative Law Judge James H. Peterson, III of the Division of Administrative Hearings.

APPEARANCES

For the Florida Commission on Ethics:

JOSEPH C. BURNS, Esquire
Florida Bar No. 1023385
(850) 414-3300, Ext. 3702
joseph.burns@myfloridalegal.com
MELODY A. HADLEY, Esquire
Florida Bar No. 0636045
(850) 414-3300, Ext. 3704
melody.hadley@myfloridalegal.com
Advocates for the Florida Commission on Ethics
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050

For Respondent:

WILLIAM N. SPICOLA, Esquire
Komisar Spicola PA
Florida Bar No. 70732
101 N. Gadsden Street
Tallahassee, Florida 32301
(850) 328-4447
William@komisarspicola.com

LUKE NEWMAN, Esquire
Florida Bar No. 0859281
308 McDaniel Street
Tallahassee, Florida 32303
(850) 224-4444
luke@lukenewmanlaw.com

Filed August 21, 2026 3:00 PM Division of Administrative Hearings

For [redacted]

KEVIN MAWN, Esquire
Onek & Mawn, P.A.
Florida Bar No. 508081
1820 Garden Street
Titusville, Florida 32796
(321) 264-8800
kevin@321dui.com

STATEMENT OF THE ISSUE

The issue in this case, as stipulated by the parties, is whether Respondent violated section 112.313(6), Florida Statutes, by using his public position and/or public resources to secure a special privilege, benefit, or exemption for himself and/or another, and whether Respondent violated Article II, Section 8(h)(2), Florida Constitution, by using his position to obtain a disproportionate benefit for himself and/or another, and, if so, what is the appropriate penalty?

PRELIMINARY STATEMENT

On April 30, 2025, the Florida Commission on Ethics issued an Order Finding Probable Cause to believe that Respondent, Bryan Lober, as a County Commissioner for Brevard County, Florida, violated Section 112.313(6), Florida Statutes, by using his public position and/or public resources to secure a special privilege, benefit, or exemption for himself and/or another, and that Respondent violated Article II, Section 8(h)(2), Florida Constitution, by using his position to obtain a disproportionate benefit for himself and/or another. The case was forwarded to the Division of Administrative Hearings on April 21, 2026.

A Joint Prehearing Stipulation was filed on June 19, 2026. At the final hearing, Advocate called four (4) witnesses: Respondent; [redacted], Rachel Sadoff, and Robert Malone. Advocate offered six exhibits, which shall be referenced as "Adv. Exhibit," and numbered 1, 2, 4, 7, 8, and 10. Respondent called no additional witnesses beyond those called by the Advocate. Respondent offered three exhibits, which shall be referenced as "Resp. Exhibit" and numbered

17, 19, and 22. All references to the record shall be in parentheticals. A transcript of the hearing was filed. References to the hearing transcript shall be made as "TR" followed by the appropriate Bates-stamped page number with the witness's last name in brackets.

Advocate timely filed this Proposed Recommended Order on August 21, 2026.

FINDINGS OF FACT

1. At all times material to this action, Respondent served as a County Commissioner for Brevard County, Florida. (TR. p. 30 [Respondent])

2. Specifically, Respondent served as a Brevard County Commissioner from November 2018 until April 1, 2022. (Joint Stipulation, p. 16)

3. Respondent is a licensed attorney in the State of Florida and listed loberb@gmail.com as his email address on his public Florida Bar Member profile. (TR. p. 25-28 [Respondent])

4. As a governmental entity, Brevard County possessed a Certificate of Exemption which certified that it was exempt from paying sales and use tax on property and services that it rented or purchased ("tax-exempt certificate"). The certificate number for the applicable time period is 85-8012621749C-1, which was effective October 31, 2017 and expired October 31, 2022. (Adv. Exhibit 2)

5. The tax-exempt certificate contains, in part, the following information under the heading "Important Information for Exempt Organizations:"

   a. "2. Your Consumer's Certificate of Exemption is to be used solely by your organization for your organization's customary nonprofit activities."

   b. "3. Purchases made by an individual on behalf of the organization are taxable, even if the individual will be reimbursed by the organization."

   c. "4. This exemption applies only to purchases your organization makes.[]"

d. "5. It is a criminal offense to fraudulently present this certificate to evade the payment of sales tax. Under no circumstances should this certificate be used for the personal benefit of any individual. Violators will be liable for payment of the sales tax plus a penalty of 200% of the tax, and may be subject to conviction of a third-degree felony. Any violation will require revocation of the certificate." (Adv. Exhibit 2)

6. Three purchases were made from a company named "Rockler" on March 20, 2021, July 25, 2021, and July 27, 2021, which were all made for Respondent's reelection campaign. (collectively, "the Rockler purchases"). (TR. p. 31 [Respondent]; Joint Stipulation, p. 15)

7. The Rockler purchases were for sign-building tools and were paid for with a campaign credit or debit card and appear on Respondent's campaign finance reports. (TR. pp. 31, 41 [Respondent]; Joint Stipulation p. 16)

8. Rockler received an email on March 20, 2021 from loberb@gmail.com, asserting that the first Rockler transaction, made on the same day, was entitled to tax-exemption because it was made on behalf of the Brevard County Board of County Commissioners. (Adv. Exhibit 2)

9. The email provides the tax-exempt certificate number and expiration date that matches the Brevard County tax-exempt certificate. It explicitly instructs Rockler to not process the order if for any reason it is not able to process the tax-exempt certificate. (Adv. Exhibit 1; Adv. Exhibit 2)

10. The email also references a phone call with a Rockler customer service representative named Marilyn and states that future orders that qualify for tax-exemption will have notations in the memo/comments section of the order. (Adv. Exhibit 1)

11. The email is signed, "Truly, Bryan." (Adv. Exhibit 1)

12. Respondent understood that the email address that he lists on his public Florida Bar profile is required to be an email address for himself but indicated that his wife, [redacted] also has access to the loberb@gmail.com account. (TR. p. 30, 49 [Respondent])

13. Despite loberb@gmail.com being listed on Respondent's Florida Bar profile and testifying that only he and his wife have access to the account, he denied knowing who authored the email or who spoke on the phone with Marilyn, stating that he could only speculate. (TR. pp. 38, 42, 49 [Respondent])

14. Though Respondent testified that his wife, [redacted], frequently helped him with both official and personal tasks, he specifically denied having any personal knowledge about who wrote the email. Respondent specifically denied that he was indicating that Rebecca Lober authored the email or that the affidavit she submitted in this matter refers to the email in question. (TR. pp. 42-43, [Respondent]; Resp. Exhibit 22)

15. No taxes were charged on any of the Rockler transactions. (TR. p. 31 [Respondent])

16. Respondent testified that no taxes were charged on the second two Rockler transactions due to an error on Rockler's part. (TR. p. 40 [Respondent])

17. Governmental entities that have conducted investigations into Respondent's conduct include FDLE, the Brevard County Clerk of Court and Comptroller, and the instant case by the Commission on Ethics. (TR. pp. 84-85 [R. Lober])

18. Despite multiple investigations by governmental entities and negative media narratives, neither Respondent nor his spouse ever told anyone that Respondent did not make the purchases in question. (TR. pp. 45-47 [Respondent]; pp. 84-85 [R. Lober])

19. Despite claiming not to have firsthand knowledge of who authored the email, Respondent saw a copy of it in the FDLE report and Clerk's audit report and did not doubt that the email came from his email account. (TR. p. 50 [Respondent])

20. Respondent did not pay any taxes on these purchases until after FDLE referred this matter to the Commission on Ethics. (TR. p. 51 [Respondent]) This payment, made nearly four years after the first transaction and after investigations by multiple governmental entities is not probative of whether any violation occurred in 2021. (Resp. Exhibit 19)

21. During direct examination by the Advocate, [redacted] invoked the Fifth Amendment of the United States Constitution in response to the following questions and refused to answer:

a. How she recognized the email in question

b. Whether she spoke with Marilyn at Rockler Customer Service

c. Whether she made the Rockler purchases

d. Whether she is familiar with the account rockler@bryanlober.com

e. Whether she ever made any statements to FDLE, the State Attorney, or the Commission on Ethics that she made the Rockler purchases

f. Why she would not use rockler@bryanlober.com to make the Rockler purchases

g. Where she obtained the County's tax-exempt certificate number (TR. pp. 87-91 [R. Lober])

22. On cross-examination by Respondent's counsel, [redacted] testified that she uses Respondent's email account when helping him and that she placed "an order" on his behalf. (TR. p. 93 [R. Lober])

23. When asked again on redirect examination by the Advocate if she made the March 20, 2021 order with Rockler, Ms. Lober invoked the Fifth Amendment again. (TR. p. 100 [R. Lober])

24. [redacted] never testified to making the Rockler purchases or sending the email from loberb@gmail.com. (TR pp. 93-99 [R. Lober])

25. [redacted] is also a licensed attorney in the State of Florida, and she listed an email address other than loberb@gmail.com on her public Florida Bar Member profile. (TR. p. 88 [R. Lober])

26. Rachel Sadoff, Brevard County Clerk of Court and Comptroller, conducted an audit of County spending. (TR. p. 108 [Sadoff])

27. Through the audit, Ms. Sadoff discovered facts and circumstances indicating that Respondent misused County funds. (TR. pp. 111-12 [Sadoff])

28. Throughout the various investigations conducted into these purchases, no one ever suggested that [redacted] was involved. (TR. p. 123 [Malone])

29. Respondent's denial of any knowledge as to who authored the email from his own email account is not credible. It is more credible that Respondent authored the email and thus made the request to use the County's tax-exempt certificate.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. § 120.57(1), Fla. Stat.

31. Section 112.322, Florida Statutes, and Rule 34-5.0015, Florida Administrative Code, authorize the Commission on Ethics to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes (the Code of Ethics for Public Officers and Employees).

32. Respondent was subject to the requirements of Part III, Chapter 112, Florida Statutes, the Code of Ethics for public officers and employees, for his acts and omissions during his tenure as a County Commissioner for Brevard County, Florida.

The burden of proof, absent a statutory directive to the contrary, is on the Florida Commission on Ethics, the party asserting the affirmative of the issue of these proceedings. *Department of Transportation v. J.W.C. Co., Inc.*, 396 So. 2d 778 (Fla. 1st DCA 1981); *Balino v. Department of Health and Rehabilitative Services*, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting the affirmative: that Respondent violated §112.313(6), Florida Statutes, and Article II, Section 8(h)(2), Florida Constitution. Commission on Ethics proceedings which seek recommended penalties against a public officer or employee require proof of the alleged violation(s) by clear and convincing evidence. *See Latham v. Florida Comm'n on Ethics*, 694 So. 2d 83 (Fla. 1st DCA 1997). Therefore, the burden of establishing by clear and convincing evidence the elements of Respondent's violations is on the Commission.

33. As noted by the Supreme Court of Florida:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re: Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). The Supreme Court of Florida also explained, however, that, although the "clear and convincing" standard requires more than a "preponderance of the evidence," it does not require proof "beyond and to the exclusion of a reasonable doubt." *Id.*

34. Section 112.313(6), Florida Statutes, a provision with which Respondent is charged, provides as follows:

> MISUSE OF PUBLIC POSITION. No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

The term "corruptly" is defined by Section 112.312(9), Florida Statutes, as follows:

> "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

35. In order to establish a violation of §112.313(6), Florida Statutes, the following elements must be shown by clear and convincing evidence:

a. Respondent must have been a public officer or employee;

b. Respondent must have:

i. used or attempted to use his official position or any property or resources within his trust,

or

ii. performed his official duties;

c. Respondent's actions must have been taken to secure a special privilege, benefit, or exemption for himself or others;

d. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting himself or another person from some act or omission which was inconsistent with the proper performance of public duties.

36. Article II, Section 8(h)(2), Florida Constitution, the other provision with which Respondent is charged, provides as follows:

> **Ethics in government.**—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:
>
> (h)(1) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.
>
> (2) A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

37. Respondent was, at all relevant times, a "public officer" as provided in Section 112.313(6), Florida Statutes, and Article II, Section 8(h)(2), Florida Constitution. The first element for violation of Section 112.313(6), Florida Statutes, was met.

38. The second element was met when Respondent used the County tax-exempt certificate, a County resource which he only had access to by virtue of his holding of public office, to make purchases for his re-election campaign.

39. Avoiding the payment of taxes on a purchase is a special benefit for Respondent. Respondent inappropriately used a resource within his trust and his position to secure a special benefit for himself. But for his official position, Respondent would have paid the sales taxes on his campaign purchases.

40. Respondent's use of his official position and/or County resource to secure for himself a special benefit does not, by itself, amount to a violation of the Code of Ethics. To prove a violation of Section 112.313(6), Florida Statutes, or Article II, Section 8(h)(2), Florida Constitution, it must be established that Respondent acted with corrupt intent.

41. To satisfy the statutory element of corrupt intent, clear and convincing evidence must be adduced that Respondent acted with reasonable notice that his conduct was inconsistent

with the proper performance of his public duties and would be a violation of the law or the Code of Ethics. Blackburn v. State Comm'n on Ethics, 589 So. 2d 431, 434 (Fla. 1st DCA 1991).

42. "Direct evidence of [wrongful] intent is often unavailable." Shealy v. City of Albany, Ga., 89 F.3d 894, 806 (11th Cir. 1996); see also State v. West, 262 So. 2d 457, 458 (Fla. 4th DCA 1972) ("[I]ntent is not usually the subject of direct proof.").

43. Circumstantial evidence, however, may be relied upon to prove the wrongful intent which must be shown to establish a violation of Section 112.313(6), Florida Statutes. See U.S. v. Britton, 289 F. 3d 976, 981 (7th Cir. 2002)("As direct evidence of a defendant's fraudulent intent is typically unavailable, specific intent to defraud may be established by circumstantial evidence and by inferences drawn from examining the scheme itself that demonstrate that the scheme was reasonably calculated to deceive persons of ordinary prudence and comprehension." (internal quotation marks omitted). For instance, such intent may be inferred from the public servant's actions. See Swanson v. State, 713 So. 2d 1097, 1101 (Fla. 4th DCA 1998) ("Actions manifest intent."); and G.K.D. v. State, 391 So. 2d 327, 328-29 (Fla. 1st DCA 1980) ("Appellant testified that he did not intend to break the window, but the record indicates that he did willfully kick the window, and he may be presumed to have intended the probable consequences of his actions.")

44. The evidence in this case did not demonstrate or establish that there were any legitimate, non-corrupt reasons for Respondent to use the County's tax-exempt certificate for his campaign expenses. Respondent's use of the County tax-exempt certificate was corrupt as defined above.

45. The issues as to whether [redacted] authored the email, whether she made the purchases from Rockler, where she may have gotten the County tax-exempt certificate number,

or whether she was the one who spoke with customer service are material issues in this case. [redacted] invoked her Fifth Amendment privilege when asked about these material issues.

46. "A court does not abuse its discretion in excluding testimony when cross-examination on material issues raised on direct examination is curtailed because of a witness's valid claim of privilege." *Sule v. State*, 968 So. 2d 99, 107 (Fla. 4th DCA 2007).

47. [redacted] invocation of the Fifth Amendment on material issues curtailed the Advocate's ability to meaningfully cross-examine or otherwise develop the testimony.

48. [redacted] testimony regarding those material issues on which she invoked the Fifth Amendment should be and are excluded.

49. The clear and convincing evidence shows that Respondent's actions were in violation of the Code of Ethics.

PENALTY

The penalties available for a former public employee who violated the Code of Ethics include: public censure and reprimand, civil penalty not to exceed $10,000, and restitution of any pecuniary benefit received because of the violation committed. See § 112.317(1)(a), Fla. Stat.[1] In case number 20-3599EC, In re: Dustin Daniels, Daniels was alleged to have sent 106 emails in violation of Section 112.313(6), Florida Statutes. Despite the finding that only one of those emails was improper and did not produce any pecuniary gain, his violation warranted recommending a $250 fine. In case number 18-1879EC, In re: Derryl O'Neal, O'Neal stored his personal jet ski on a city-owned jet ski lift prompting a recommendation of a $2,000 penalty for violating Section 112.313(6), Florida Statutes. Finally, in case number 15-4877EC, In re: James L. Manfre, Manfre misused his agency's purchase card. Manfre later reimbursed the agency for

[1] Section 112.317, Florida Statutes, was amended to allow for a $20,000 civil penalty, effective May 11, 2023, however, Respondent's conduct predates the effective date of the amendment.

the improper expenses after being told he should. Because reimbursement after being prompted does not erase the violation, a civil penalty of $5,000 and a public censure and reprimand was recommended. Given Respondent's misuse of a County tax-exempt certificate which produced a pecuniary gain for Respondent, and his reimbursement came only after several investigations by governmental entities, a civil penalty of $5,000 and a public censure and reprimand is appropriate.

JOSEPH C. BURNS
Advocate for the Florida Commission
On Ethics
Florida Bar No. 1023385
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
Telephone: (850) 414-3702
Facsimile: (850) 488-4872
E-mail: joseph.burns@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Advocate's Proposed Recommended Order has been furnished to Counsel for Respondent William N. Spicola, Komisar Spicola, P.A., P.O. Box 664, Tallahassee, FL 32302 via email only at william@komisarspicola.com, this 21st day of August 2026.

Joseph C. Burns