STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: Bryan Lober,

Respondent.

_____/

DOAH Case No.: 26-2084EC
Referral No.: 24-166

RESPONDENT'S PROPOSED RECOMMENDED ORDER

A final hearing was held by Zoom conference before James H. Peterson, III, Administrative Law Judge of the Division of Administrative Hearings, on June 29, 2026.

APPEARANCES

For the Advocate:

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For Respondent:

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STATEMENT OF THE ISSUE

The issue is whether the Advocate proved by clear and convincing evidence that Respondent, Bryan Lober, violated section 112.313(6), Florida Statutes, or Article II, section 8(h)(2), Florida Constitution, in connection with three Rockler transactions dated March 20, 2021, July 25, 2021, and July 27, 2021.

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The issues preserved for final hearing were limited to whether Respondent intentionally used, requested, directed, authorized, knowingly caused, or corruptly intended Brevard County tax-exempt treatment to be applied to one or more of those three Rockler transactions.

PRELIMINARY STATEMENT

The Advocate presented testimony from Bryan Lober, [redacted], Rachel Sadoff, and Robert Malone. Respondent cross-examined each witness.

The following exhibits were admitted during the hearing: Respondent's Exhibit 17, PAC Contribution-Return Records; Respondent's Exhibit 19, Florida Department of Revenue Voluntary Disclosure and Related Payment; Respondent's Exhibit 22, September 5, 2025 Notarized Statement of [redacted]; Petitioner's Exhibit 1, Email Using County Tax Exempt Certificate; Petitioner's Exhibit 2, County Tax Exempt Certificate; Petitioner's Exhibit 4, Respondent's March 2021 Campaign Finance Report; Petitioner's Exhibit 7, Respondent's July 2021 Campaign Finance Report; Petitioner's Exhibit 8, DOR Response Memo; and Petitioner's Exhibit 10, Report of Investigation. Tr. 3-4.

Neither side presented an opening argument or closing argument. The undersigned directed the parties to submit proposed findings of fact and conclusions of law and to address whether any adverse inference may properly be drawn from Mrs. Lober's invocation of the Fifth Amendment.

FINDINGS OF FACT

1. Respondent Bryan Lober served as a Brevard County Commissioner from November 2018 until April 1, 2022.
2. Brevard County maintained a tax-exemption certificate that could be used for governmental purchases.
3. The parties' Joint Pre-Hearing Statement limited the final hearing to three Rockler transactions: March 20, 2021; July 25, 2021; and July 27, 2021. Joint Pre-Hearing Statement at 1, 15-16.
4. The Advocate's theory was that Respondent caused Brevard County's tax-exemption certificate to be processed in relation to each of the three Rockler transactions and directed that the purchases be made using the certificate to obtain the benefit of not paying sales tax. Joint Pre-Hearing Statement at 1.
5. Petitioner's Exhibit 2, the County Tax Exempt Certificate, was admitted into evidence. Tr. 17:17-24.

6. Ms. Sadoff testified that, if someone requested a copy of the County sales-tax exemption certificate as part of a public-records request, she believed the Clerk would be obligated to provide it, and she did not identify any specific content that was confidential, exempt, or required to be redacted. Tr. 114:1-5.

7. The record does not establish that Brevard County's tax-exemption certificate was confidential, exempt from public-records disclosure, uniquely entrusted to Respondent, issued to Respondent, provided to Respondent, or made available to Respondent by virtue of his County Commission position. Nor did the Advocate prove that Respondent had unique or meaningfully restricted access to the certificate.

8. Respondent denied personally using or providing Brevard County's tax-exemption certificate for the Rockler transactions; denied directing anyone else to provide the certificate; and denied requesting, directing, authorizing, or knowingly causing tax-exempt treatment to be applied to any Rockler transaction. Joint Pre-Hearing Statement at 2.

9. The issues of fact preserved for final hearing included whether Respondent or Mrs. Lober made the Rockler transactions; whether Respondent personally used, or directed another to use, Brevard County's tax-exemption certificate in relation to any of the three Rockler transactions; and whether Respondent acted corruptly at the time of each respective Rockler transaction. Joint Pre-Hearing Statement at 19-20.

10. The parties stipulated that there were three transactions made on Rockler.com for the account rockler@bryanlober.com: one on March 20, 2021, one on July 25, 2021, and one on July 27, 2021. Joint Pre-Hearing Statement at 15.

11. The Rockler transactions were paid for in whole with a campaign payment card, were not paid with a Brevard County-issued purchasing card, appeared on Respondent's campaign finance reports, and were not reimbursed by Brevard County. Joint Pre-Hearing Statement at 2, 16.

12. The parties stipulated that sales tax was not collected by Rockler.com for the three Rockler transactions. Joint Pre-Hearing Statement at 15.

13. The parties stipulated that Rockler received an email from Loberb@gmail.com on March 20, 2021, indicating that the March 20, 2021 transaction was for Brevard County business. Joint Pre-Hearing Statement at 15.

14. The parties did not stipulate that Respondent authored, sent, authorized, or directed anyone else to send the March 20, 2021 email. They also did not stipulate that Petitioner's Exhibit 1 was authored by Respondent, sent by

Respondent, authorized by Respondent, complete, authentic, admissible, or competent to prove Respondent's knowledge, timing of knowledge, intent, private benefit, or corrupt intent.

15. The parties stipulated that there were no subsequent emails to Rockler from Loberb@gmail.com indicating that the July 25, 2021 or July 27, 2021 transactions were for Brevard County business. Joint Pre-Hearing Statement at 15.

16. The parties stipulated that the State Attorney's Office, having examined the same universe of materials made available in this matter, filed no criminal charges and indicated there was no evidence that Respondent requested a sales-tax exemption as to either of the latter two Rockler transactions. Joint Pre-Hearing Statement at 16.

17. Respondent testified at final hearing. Respondent's testimony on the disputed Rockler issues was credible and reliable. No witness with personal knowledge materially contradicted his testimony, and it was consistent with the admitted exhibits and the testimony establishing the limits of the Rockler investigation.

18. Respondent denied authoring Petitioner's Exhibit 1. When asked whether he authored the email, Respondent answered, 'No.' Tr. 36:10-14.

19. Respondent testified that the email address was one that he and his wife used, but that he did not author the email. Respondent testified: 'It's my email address that I and my wife use. I did not author that email.' Tr. 36:16-20.

20. The undersigned admitted Petitioner's Exhibit 1 over Respondent's objection, while recognizing that Respondent denied authorship and that there may be 'some problem with tying this to Mr. Lober.' Tr. 37:2-6. The undersigned further noted that Petitioner's Exhibit 1 was 'subject to the hearsay objection, especially if he denies authorship.' Tr. 37:17-23. Respondent did, in fact, deny authorship.

21. Respondent's denial of authorship is accepted as credible and reliable.

22. The Advocate presented no Rockler employee, Rockler records custodian, Rockler account representative, person identified as 'Marilyn,' or other Rockler witness with personal knowledge of Rockler's internal processing of the three transactions, the authorship of Petitioner's Exhibit 1, any communication with Marilyn, or the reason Rockler did not collect sales tax on the July 25 and July 27, 2021 transactions.

23. The record establishes that Petitioner's Exhibit 1 came from an email account associated with Respondent, but the record does not establish that Respondent personally authored, sent, authorized, or directed anyone else to send that email.

24. The record contains no Rockler testimony, checkout-screen evidence, transaction metadata, order-process record, admitted exhibit, or other competent evidence establishing when or how sales tax was removed from or omitted from the July 25, 2021 or July 27, 2021 Rockler transactions. The record does not show whether sales tax was omitted during the online order process, displayed during checkout and later removed, manually removed by Rockler after the orders were submitted, or otherwise omitted through Rockler's internal processing.

25. The Advocate questioned Respondent concerning address information on Respondent's Florida Bar member profile. That collateral questioning did not materially impeach Respondent's testimony on any Rockler issue and did not establish authorship, authorization, knowledge, direction, causation, or corrupt intent.

26. When the Advocate attempted to admit Respondent's Florida Bar profile as an impeachment exhibit during Respondent's testimony, the Administrative Law Judge asked, 'Impeachment from what?' and declined to admit the exhibit because it had not been previously disclosed and the Administrative Law Judge did not know what it impeached. Tr. 29:1-18.

27. The Advocate separately questioned Mrs. Lober concerning address and email information on her Florida Bar member profile, including the email address rebecca@loberlaw.com, and about use of Respondent's email address. Tr. 88:1-25; Tr. 89:1-9. Mrs. Lober testified that she worked as a contract administrator and that her employer was a nonprofit organization. Tr. 83:7-14. That questioning did not establish that Mrs. Lober worked for Respondent's law firm, did not contradict her testimony regarding her employment, and did not establish that Respondent authored, sent, authorized, directed, or knowingly caused the March Rockler email or any Rockler tax-exempt treatment.

28. Respondent testified that he did not ask Mrs. Lober or anyone else to apply tax-exempt status or treatment to anything that did not legitimately require it. Tr. 60:11-20.

29. Respondent testified, 'I can tell you to an absolute certainty, I did not ask her to do that.' Tr. 60:18-20.

30. Respondent testified that he did not knowingly cause tax-exempt treatment to be applied to any Rockler transaction. Tr. 60:21-23.

31. As to the July order or orders, Respondent testified that he requested tax-exempt treatment '[i]n no way, shape, or form. Not directly, not indirectly.' Tr. 61:11-16. Respondent also testified that he did not send any July email to Rockler asking for tax-exempt treatment and that there was no communication between him and Rockler regarding the July transactions. Tr. 61:17-21.

32. The record contains no July email, order comment, notation, instruction, call record, witness testimony, or admitted exhibit showing that Respondent requested, directed, authorized, or knowingly caused Rockler to apply Brevard County tax-exempt treatment to the July 25 or July 27, 2021 transaction.

33. Accordingly, the fact that Rockler ultimately did not collect sales tax on the July transactions does not establish who caused the omission, when it occurred, how it occurred, or that Respondent requested, directed, authorized, approved, or knowingly caused tax-exempt treatment at the time of either July transaction.

34. Respondent's Exhibit 22, the September 5, 2025 notarized statement of [redacted], was admitted into evidence without objection. Tr. 22:23-23:4. The undersigned later confirmed that Respondent's Exhibit 22 had previously been accepted. Tr. 99:13-18.

35. Mrs. Lober identified Respondent's Exhibit 22, testified that it fairly and accurately represented her notarized statement, testified that everything in the statement was true and accurate to the best of her knowledge and recollection, testified that she had no updates or corrections, and testified that she stood by the statement. Tr. 97:1-99:10.

36. Respondent's Exhibit 22 states that Mrs. Lober placed the initial Rockler order and emailed the vendor because she mistakenly believed the purchase related to County business.

37. Mrs. Lober's hearing testimony was consistent with the central explanation in Respondent's Exhibit 22. She testified that she placed an order, thought it was for County business, and used the County office address and phone number. Tr. 94:1-95:6.

38. Respondent's Exhibit 22 is accepted as credible and reliable to the extent it explains Mrs. Lober's own conduct, understanding, and mistake concerning the initial Rockler order and related vendor communication.

39. Respondent's Exhibit 22 is consistent with Respondent's denial that he authored Petitioner's Exhibit 1 and with Respondent's testimony that he did not request, direct, authorize, or knowingly cause tax-exempt treatment to be applied to any Rockler transaction.

40. During the Advocate's examination, Mrs. Lober invoked the Fifth Amendment in response to questions concerning the Rockler email and Rockler order. She recognized Petitioner's Exhibit 1 but invoked the Fifth Amendment when asked how she recognized it. Tr. 86:3-21.

41. Mrs. Lober invoked the Fifth Amendment when asked whether she spoke with Marilyn, whether she made a Rockler purchase on March 20, 2021, whether she had familiarity with the Rockler account, and whether she made later Rockler purchases after March 20, 2021. Tr. 87:1-22.

42. Mrs. Lober had independent counsel at the hearing. She testified that she had not waived any legal privileges or rights; that she was aware of her constitutional right against self-incrimination and the marital communications privilege; and that she reserved those rights in her statement. Tr. 98:8-21.

43. Mrs. Lober testified that she reserved those rights to be cautious and that, after over five years of investigations, inquiries, and related legal matters, she was simply being cautious. Tr. 98:22-99:4.

44. Mrs. Lober's invocation of the Fifth Amendment was consistent with self-protection concerning questions directed at her own conduct. The invocation did not repudiate Respondent's Exhibit 22 and did not establish that Respondent authored, sent, authorized, directed, or knowingly caused any Rockler email or tax-exempt treatment.

45. Ms. Sadoff, the Brevard County Clerk of the Circuit Court and Comptroller during the relevant audit period, did not testify from personal knowledge that Respondent authored Petitioner's Exhibit 1, sent Petitioner's Exhibit 1, or requested, directed, authorized, or knowingly caused tax-exempt treatment for any Rockler transaction.

46. Ms. Sadoff testified that she did not witness anyone send an email to Rockler, nobody told her they sent a particular email to Rockler, and she had no personal knowledge of who sent the Rockler transactions. Tr. 114:6-19.

47. Ms. Sadoff testified that she never spoke with Respondent about Rockler transactions or sales tax. Tr. 115:16-23.

48. Ms. Sadoff's testimony corroborates the absence of any Clerk witness with personal knowledge tying Respondent to the March 20, 2021 email or to any Rockler tax-exemption request.

49. Mr. Malone, an investigator for the Florida Commission on Ethics, testified at the final hearing. Mr. Malone's testimony is accepted as credible and reliable as

to the investigative steps he personally took and the investigative limits he personally described. Tr. 117:20-25.

50. Mr. Malone testified on direct examination that his reason for believing Respondent sent the email was that the email was in Respondent's name and that he had no indication anyone else was involved. Tr. 124:1-4. That testimony reflects association with a name or account, not personal knowledge of authorship.

51. Mr. Malone testified that no one he spoke with during his investigation told him they witnessed Respondent send an email to Rockler. Tr. 127:5-8.

52. Mr. Malone testified that Inspector Hubbard found no evidence that Respondent provided Rockler with the County exemption certificate for the July purchases, and that Mr. Malone did not have any documents showing a request to exempt taxes for the two July purchases. Tr. 128:9-19.

53. Mr. Malone testified that he did not personally interview anyone from Rockler or a Rockler representative; tried to locate Marilyn but was unable to reach anyone at Rockler who had knowledge; did not subpoena any additional Rockler records beyond what FDLE had obtained; relied on Inspector Hubbard's FDLE investigative summary for factual findings; added no new document review beyond what Inspector Hubbard reviewed; and was never able to locate any witness who could say who sent the email to Rockler. Tr. 128:20-129:16; Tr. 131:2-5.

54. Mr. Malone testified that his investigation was essentially a review and summary of FDLE's prior work. Tr. 129:21-24.

55. Mr. Malone testified that Respondent's counsel asked for written questions, that Mr. Malone asked his supervisor and the Commission's executive director whether an exception should be made, and that he was told the Commission was 'sticking to our rule of no written questions.' Tr. 125:13-24. The undersigned credits this testimony as evidence of the Commission's ordinary practice regarding written questions, without finding that the testimony established a formal rule, promulgated rule, or written policy.

56. Mr. Malone's credited testimony corroborates Respondent's position that the Advocate did not close the Rockler-specific attribution gap and did not present competent evidence that Respondent requested, directed, authorized, or knowingly caused tax-exempt treatment for the July transactions.

57. The Advocate did not call Inspector Hubbard, any FDLE witness with personal knowledge of Rockler authorship or tax-exemption requests, any State Attorney's Office witness, or any Rockler witness.

58. The Advocate did not present testimony from any witness with personal knowledge that Respondent personally authored, sent, directed, authorized, or knowingly caused the March 20, 2021 Rockler email or any request for Rockler tax-exempt treatment. The record establishes that the email came from an account associated with Respondent, but Respondent credibly testified that the account was not used exclusively by him.

59. Respondent's Exhibit 17, PAC Contribution-Return Records, was admitted without objection. Tr. 22:4-18. Respondent testified that his campaign returned $1,000 checks both before and after the Rockler transactions. Tr. 74:18-75:7.

60. The campaign-refund evidence undercuts the Advocate's theory that Respondent acted with corrupt intent to obtain or conceal a comparatively small campaign-related sales-tax benefit.

61. Respondent's Exhibit 19, Florida Department of Revenue Voluntary Disclosure and Related Payment, was admitted into evidence without objection after the Advocate raised the tax payment on redirect. Tr. 76:1-17.

62. Respondent's Exhibit 19 stated that sales tax had gone unpaid for three campaign purchases, that there was an error regarding use of a sales and use exemption certificate, and that a check for $134.77 was enclosed. Tr. 76:21-77:14.

63. Respondent testified that the later payment used the amount alleged by FDLE, but that the amount alleged did not match the sales-tax rate in Brevard County and was 'over 7 percent.' Tr. 75:13-19. That testimony was not rebutted.

64. Respondent's later payment of the disputed tax amount does not establish that Respondent requested, directed, authorized, or knowingly caused tax-exempt treatment at the time of any Rockler transaction and does not establish corrupt intent.

65. The record does not establish when Respondent first learned of the Rockler related sales tax issue. The record therefore does not establish the timing of Respondent's Exhibit 19, Florida Department of Revenue Voluntary Disclosure and Related Payment, in relation to Respondent's first knowledge of that issue.

66. Respondent testified that the telephone number associated with the March Rockler transaction was the District 2 County Commission main public-facing

office number, that it was a governmental number, and that it did not ring to his cell phone, home phone, or any private personal number. Tr. 64:2-7; Tr. 65:1-19.

67. Respondent testified that the vendor call rang District 2 office phones and was answered by his receptionist; that the order was shipped to the District 2 office, where staff routinely received and opened packages; and that the transaction was visible rather than hidden. Tr. 66:16-67:24; Tr. 70:1-19.

68. The District 2 office phone number, office delivery, and campaign-finance disclosure do not support an inference that Respondent attempted to conceal the March Rockler transaction.

69. Respondent testified that no one asked him about Rockler or sales tax while he was a Commissioner and that Rockler was an ordinary campaign purchase to him at the time. Tr. 67:2-16. Ms. Sadoff confirmed that she never spoke with Respondent about Rockler transactions or sales tax. Tr. 115:16-23.

70. When the Advocate's questioning of Ms. Sadoff turned to purchase-card issues, the Administrative Law Judge stated, 'This is not about P-card, let's move on.' Tr. 109:4-12.

71. The final hearing record contains no admitted Amazon.com evidence establishing any Rockler element, including authorship, authorization, direction, knowledge, causation, or corrupt intent as to any Rockler transaction.

72. The Advocate did not prove that Respondent authored, sent, authorized, or directed anyone else to send Petitioner's Exhibit 1.

73. The Advocate did not prove that Respondent personally provided Brevard County's tax-exemption certificate to Rockler for any of the three Rockler transactions or directed anyone else to provide it.

74. The Advocate did not prove that Respondent requested, directed, authorized, or knowingly caused Rockler to apply Brevard County tax-exempt treatment to the March 20, 2021 transaction.

75. The record contains no competent evidence that Respondent requested, directed, authorized, or knowingly caused Rockler to apply Brevard County tax-exempt treatment to the July 25, 2021 or July 27, 2021 transaction.

76. The record does not establish that Respondent acted with corrupt intent as to any Rockler transaction.

CONCLUSIONS OF LAW

77. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to chapter 120, Florida Statutes.

78. The Commission on Ethics has final agency authority in this matter, subject to the limitations imposed by chapter 120, Florida Statutes.

79. The Advocate bears the burden of proving the alleged violations by clear and convincing evidence.

80. Clear and convincing evidence requires evidence that is credible, precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitancy, about the matter to be proved. *See Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

81. Because the case was narrowed to three specific Rockler transactions, the Advocate was required to prove the required elements transaction by transaction and at the time of each respective transaction.

82. Section 112.313(6), Florida Statutes, provides that no public officer, public employee, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource within his or her trust, or perform official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

83. The term 'corruptly' requires wrongful intent and a purpose to obtain a benefit resulting from an act or omission inconsistent with the proper performance of public duties. § 112.312(9), Fla. Stat.

84. The Advocate was required to prove more than the absence of sales tax. The Advocate was required to prove that Respondent personally used, requested, directed, authorized, or knowingly caused the application of Brevard County tax-exempt treatment and did so corruptly.

85. Under Florida's public-records law, County records are public unless an exemption or exclusion applies. No exemption or exclusion for the County tax-exemption certificate was alleged or proved in this record.

86. To the extent the Advocate's misuse-of-position theory depends on Respondent obtaining access to a governmental resource because of his public position, the record does not establish that theory. The County tax-exemption certificate's existence as a County document does not, without more, prove that Respondent misused his official position to obtain access to it or that the version associated with Petitioner's Exhibit 1 was a copy issued to Respondent.

87. This does not mean a public record can never be misused. It means only that, where the Advocate was required to prove misuse of public position and corrupt intent by clear and convincing evidence, the public-record nature and non-restricted accessibility of the certificate further undercuts any inference that Respondent obtained or used a special, restricted benefit available only through his office.

88. Article II, section 8(h)(2), Florida Constitution, prohibits abuse of public position to obtain a disproportionate benefit.

89. The Code of Ethics is penal in nature and must be strictly construed. *See Underhill v. State*, 403 So. 3d 496 (Fla. 1st DCA 2025).

90. Underhill further confirms that the Commission may not use statutory interpretation or legal characterization to fill evidentiary gaps in an Advocate's proof.

91. Section 120.57(1)(c), Florida Statutes, permits hearsay evidence in administrative proceedings for the purpose of supplementing or explaining other evidence, but hearsay evidence is not sufficient by itself to support a finding unless it would be admissible over objection in civil actions.

92. Petitioner's Exhibit 1 was admitted over Respondent's authentication and hearsay objections and subject to the limitations stated at hearing. Petitioner's Exhibit 1 cannot, standing alone, establish that Respondent authored, sent, directed, authorized, or knowingly caused the March 20, 2021 email or any tax-exempt treatment.

93. Section 90.901, Florida Statutes, requires authentication or identification as a condition precedent to admissibility, satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

94. In electronic-communication cases, association with an account name or email account is not necessarily sufficient to prove authorship where the proponent fails to establish adequate extrinsic evidence linking the disputed communication to the alleged author. *See State v. Torres*, 304 So. 3d 781, 783-84 (Fla. 4th DCA 2020); *Symonette v. State*, 100 So. 3d 180, 183 (Fla. 4th DCA 2012); *Walker v. Harley-Anderson*, 301 So. 3d 299, 302-04 (Fla. 4th DCA 2020).

95. The Advocate did not present sufficient authentication evidence to prove that Respondent authored, sent, authorized, or directed anyone else to send Petitioner's Exhibit 1.

96. The Advocate did not present competent non-hearsay testimony from Rockler, Marilyn, a Rockler records custodian, FDLE, the Clerk's Office, or any witness with personal knowledge establishing that Respondent authored, sent, directed, authorized, or knowingly caused the March 20, 2021 email or any Rockler tax-exempt treatment.

97. The Advocate did not present competent evidence establishing that Respondent requested, directed, authorized, or knowingly caused tax-exempt treatment for the July 25, 2021 or July 27, 2021 Rockler transaction.

98. The absence of sales tax ultimately collected on the July transactions does not prove when or how tax was omitted or removed, does not prove that Respondent requested, directed, authorized, or knowingly caused the absence of sales tax, and does not prove corrupt intent.

99. The State Attorney's determination, as reflected in the Joint Pre-Hearing Statement, that there was no evidence that Respondent requested a sales-tax exemption as to either of the latter two Rockler transactions does not control this proceeding, but it is consistent with the evidentiary gap in this record.

100. The Fifth Amendment privilege protects a witness against compelled self-incrimination and extends to answers that would furnish a link in the chain of evidence. See *Hoffman v. United States*, 341 U.S. 479, 486-87 (1951). In civil and administrative proceedings, an adverse inference may be permissible in some circumstances, but it is not automatic and may not substitute for the proponent's burden of proof.

101. In *Omulepu v. Department of Health, Board of Medicine*, 249 So. 3d 1278 (Fla. 1st DCA 2018), the First District upheld an adverse inference in an administrative disciplinary proceeding where the respondent physician himself invoked the Fifth Amendment and the inference was combined with independent probative evidence establishing the charged misconduct, including expert testimony, multiple punctures of patient organs, and the respondent's own admission that he had "messed up." *Id.* at 1281. Thus, the adverse inference supplemented independent evidence establishing the respondent's conduct; it did not supply the conduct or independently satisfy the agency's burden.

102. Judge Makar's concurrence in *Omulepu* further explained that an adverse inference cannot become an independent fact that, by itself, satisfies the proponent's burden of proof, and that sufficient record evidence apart from the adverse inference remains necessary. *Id.* at 1283-84 (Makar, J., concurring). An inference must be rooted in and flow directly from record evidence establishing the charged misconduct; an inference alone cannot establish liability. *Id.* at 128.

103. Mrs. Lober was a nonparty witness called by the Advocate, appeared with independent counsel, authenticated and stood by her admitted notarized statement, and invoked the Fifth Amendment in response to questions directed at her own conduct. Unlike *Omulepu*, the witness invoking the privilege was not Respondent.

104. The most reasonable inference from Mrs. Lober's invocation is self-protection. The record does not support an adverse inference that Respondent authored, sent, authorized, directed, or knowingly caused any Rockler email or tax-exempt treatment, or that Respondent acted with corrupt intent.

105. Even if the finder of fact determines that a witness is not credible, the testimony of that witness cannot be used as direct evidence of the matter to which the witness testified. The determination of credibility is a critical function of the trier of fact, but a finding that a witness is not credible does not permit the trier of fact to interpret the testimony as direct evidence of the matter asserted. While the trier of fact has the authority to assess the credibility of witnesses, they may not construe "testimony contrary to what was actually testified." *M.P.W. v. State*, 702 So. 2d 591, 592 (Fla. Dist. Ct. App. 1997)

106. Independently of the weight afforded to Respondent's Exhibit 22 or Mrs. Lober's testimony, the Advocate failed to present competent evidence sufficient to establish Respondent's authorship, authorization, direction, causation, knowledge, or corrupt intent. Accordingly, neither a credibility determination concerning Mrs. Lober nor any permissible adverse inference arising from her invocation can cure those evidentiary gaps or satisfy the Advocate's clear and convincing burden of proof.

107. Drawing the Advocate's requested adverse inference would improperly use Mrs. Lober's invocation to supply missing elements of the Advocate's case. *Omulepu* supports the use of an adverse inference to supplement independent probative evidence; it does not support using an adverse inference as a substitute for missing proof of the charged conduct. The Advocate's requested adverse inference against Respondent is rejected.

108. The Advocate did not prove that Respondent secured, or attempted to secure, a special privilege, benefit, or exemption through corrupt use of official position as to any of the three Rockler transactions.

109. The Advocate did not prove a violation of section 112.313(6), Florida Statutes.

110. The Advocate did not prove that Respondent abused public position to obtain a disproportionate benefit in connection with any Rockler transaction.

111. The Advocate did not prove a violation of Article II, section 8(h)(2), Florida Constitution.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Ethics enter a final order finding no violation of section 112.313(6), Florida Statutes, or Article II, section 8(h)(2), Florida Constitution, and dismissing Ethics Referral No. 24-166 / DOAH Case No. 26-2084EC.

Respectfully submitted this 21st day of August, 2026, in Tallahassee, Leon County, Florida.

/S William N. Spicola
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CERTIFICATE OF SERVICE

I certify that the foregoing has been electronically filed with the Division of Administrative Hearings this 21st day of August, 2026, which will serve a copy by electronic delivery through the eALJ portal to all counsel of record.

/S William N. Spicola
William N. Spicola