FLORIDA
COMMISSION ON ETHICS

AUG 2 9 2025

RECEIVED

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

CONFIDENTIAL

In re: Tonya Schumacher,

Respondent. **Complaint No. 25-101**

_____/

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, Tonya Schumacher, serves as a Supervisor for the Coquina Water Control District. Complainant is Jessica Dakin of Okeechobee, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.313(7)(a), 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 August 11, 2025.

ALLEGATION

Respondent is alleged to have violated Section 112.313(7)(a), Florida Statutes, by having a conflicting contractual relationship.

APPLICABLE LAW

Section 112.313(7)(a), Florida Statutes, provides as follows:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP. (a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

In order to establish a violation of Section 112.313(7), Florida Statutes, the following elements must be proved:

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

2. Respondent must have been employed by or have had a contractual relationship with a business entity or an agency.

3. Such business entity or state or agency must have been subject to the regulation of, or doing business with, the agency of which the Respondent was an officer or employee.

OR

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

2. Respondent must have held employment or a contractual relationship that will:

a) create a continuing or frequently recurring conflict between the Respondent's private interests and the performance of the Respondent's public duties;

or

b) impede the full and faithful discharge of the Respondent's public duties.

ANALYSIS

In the fall of 2024, Respondent was campaigning for the position of Supervisor with the Coquina Water Control District (CWCD). (ROI 10) Respondent advised that during this time, Complainant, who lives in the CWCD and was her opponent's partner, was harassing and threatening her. (ROI 4, 10) Respondent contacted her friend Kevin Martin regarding the situation and he connected her with Colonial Consultants & Notary Services, LLC (Colonial Consultants) with whom Martin was formerly affiliated. (ROI 2, 9, 10) Colonial Consultants President Chris Vasconcellos advised that Respondent hired his company to assist her with writing a cease-and-desist letter to Complainant in September 2024. (ROI 9)

In October 2024, the vote for a new Supervisor was scheduled during a CWCD meeting. (ROI 10) Respondent hired Colonial Consultants to provide her with personal security during the October meeting. (ROI 9, 10, Exhibit G)

Respondent was elected and sworn in during the November 2024 CWCD meeting for which she hired Colonial Consultants for personal security. (ROI 9, 11, Exhibit G) During the November meeting, Respondent and other Supervisors voted to move forward with a forensic audit of CWCD. (ROI 11)

For the December 2024 CWCD meeting, Respondent hired Colonial Consultants for personal security. (ROI 9, 12, Exhibit G) At this meeting, Respondent asked the other Supervisors if they had reviewed the bid provided by Colonial Consultants to conduct the forensic audit. (ROI

12, 13) The Supervisors, including Respondent, voted to move forward with selecting a firm they all could agree upon to hire to perform a forensic audit of the CWCD. (ROI 12, 13, Exhibit B6)

At the January 2025 CWCD meeting, Supervisor Sean Wilcox made a motion to hire Colonial Consultants to conduct the forensic audit which was seconded by Supervisor Jeff Hubbard. (ROI 8, 14) Respondent abstained from the vote. (ROI 5, 14, Exhibit C2)

On January 28, 2025, Respondent along with Supervisor Hubbard signed the contract with Colonial Consultants for the forensic audit. (ROI 15, Exhibit D24) An invoice from Colonial Consultants dated January 31, 2025 to CWCD requested a payment of $18,000 and in the comment section stated, "Sent per [Respondent]." (ROI 6, Exhibit E) Respondent signed an $18,000 check dated February 20, 2025. (ROI 6, 15) The CWCD's contract with Colonial Consultants included "protective services" to begin on January 28, 2025 and end on or around February 1, 2026 unless extended further past the 365-day initial contract. (ROI 18 Note, Exhibit D3, 18-19)

Respondent advised that she requested personal security services from Colonial Consultants for the February 2025 CWCD meeting due to Complainant's harassment. (ROI 17) While Vasconcellos assigned two employees who appeared at the meeting, they were not needed as local law enforcement was present. (ROI 9, 17) Respondent offered to pay anyway; however, Vasconcellos advised, "We [Colonial Consultants] just ate the cost for it [sending two employees to perform private security] and called it a wash." (ROI 9, 17)

It is alleged that Respondent's contractual relationship with Colonial Consultants created a conflict with her public duties as Colonial Consultants was also doing business with CWCD. (ROI 2, 4, 6) The Commission has opined that the contractual relationship must exist simultaneously with the other elements of the statute to violate the statute. See CEO 88-11. The facts indicate that Respondent engaged Colonial Consultants for personal services which Colonial

Consultants accepted and appeared at the meeting. Regardless of whether Colonial Consultants accepted payment from Respondent, there was an intent to do business between Respondent and Colonial Consultants.[1] Therefore, Respondent engaged in a contract for personal security services from Colonial Consultants for a February 13, 2025 CWCD meeting while Colonial Consultants was also under contract with her agency, CWCD. (ROI 18)

It is noted that Respondent abstained from the vote to hire Colonial Consultants to conduct the forensic audit (although she signed the contract for the audit and protective services). However, compliance with the voting conflicts law (Section 112.3143, Florida Statutes), which would include abstention from voting or participation in matters does not obviate or negate the conflict under Section 112.313(7)(a). See CEOs 94-5, 23-2 Footnote 10.

Respondent is a CWCD Supervisor who had a contractual relationship with Colonial Consultants while it was doing business with CWCD. This indicates a violation of the statute.[2]

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

There is probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes, by having a conflicting contractual relationship.

[1] As noted above, Colonial Consultants did not charge CWCD nor Respondent for the service.
[2] The Advocate's Recommendation does not intend to reject a violation under the second clause of this statute should evidence arise to reflect a violation.

Respectfully submitted this 29th day of August, 2025.

Melody Hadley

MELODY A. HADLEY
Advocate for the Florida Commission
on Ethics
Florida Bar No. 0636045
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
(850) 414-3300, Ext. 3704

CEO 88-11 -- January 19, 1988

CONFLICT OF INTEREST

COUNTY COMMUNITY DEVELOPMENT DIVISION DIRECTOR'S ATTORNEY AND FORMER BUSINESS ASSOCIATES AND CLIENTS APPEARING BEFORE COUNTY COMMISSION

To: (Name withheld at the person's request.)

SUMMARY:

No prohibited conflict of interest exists under Section 112.313(7)(a), Florida Statutes, where a county community development division director is present and participates in discussions when his private attorney and former business associates and clients bring their projects before the county commission. Under the circumstances presented, he does not have an employment or contractual relationship with a business entity which is subject to the regulation of, or doing business with, his agency. Also, Section 112.313(7)(a) does not extend to past employment or contractual relationships.

QUESTION:

Does a prohibited conflict of interest exist where a county community development division director is present and participates in discussions when his private attorney and former business associates and clients bring their projects before the county commission?

Under the circumstances presented, your question is answered in the negative.

In your letter of inquiry you advise that you are employed by Alachua County as the Community Development Division Director. This position involves administrative/managerial work in which you are required to assist the County Manager in directing the programs and activities within the Departments of Public Works, Planning and Development, Codes Enforcement, and Environmental Services. You are responsible for assisting in the development and implementation of program policies and procedures; directing department heads in administrative activities; evaluating existing programs and recommending revisions and/or new services; and coordinating departmental activities within the County structure. You further advise that you were the Director of the North Central Florida Regional Planning Council prior to assuming your present position. You also had your own planning consulting firm, and were involved in real estate and development activities.

At the time you accepted your present position, you made an agreement with the County Manager and the County Attorney to place your development company stock in a blind trust, sell your planning consulting business, and provide the manager with a list of your projects within Alachua County which were currently active. You agreed that you would abstain from any involvement if projects on which you had worked were considered by the County, and that the Manager would assign those items to other staff members. You also

agreed that you would not enter into any new real estate broker transactions in the County. Although you have maintained your broker salesman license with a real estate firm for the purpose of receiving the commission on a contingency sale that was made three years ago, you are not involved otherwise in any real estate sales.

You question whether a prohibited conflict of interest is created if you are present and involved in the discussion of a project which is submitted to the County by one of your former clients, associates, or their attorneys. Also, you question whether a conflict is created if you are involved in any way when your personal attorney has a project before the Board of County Commissioners or their committees.

The Code of Ethics for Public Officers and Employees provides in relevant part:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP. -- No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1987).]

This provision prohibits a public employee from having an employment or contractual relationship with a business entity which is subject to the regulation of, or doing business with, his agency. From the facts you have presented, it does not appear that you currently have an employment or contractual relationship with a business entity which is regulated by, or doing business with, the County.

The second portion of Section 112.313(7)(a) prohibits you from having any employment or contractual relationship which would present a continuing or frequently recurring conflict of interest or which otherwise would impede the full and faithful discharge of your public duties. We are of the opinion that this provision also does not apply to these circumstances. As the prohibition does not extend to past employment or contractual relationships, it cannot be applied to situations in which your former business associates and clients bring their projects before the Board of County Commissioners. Although you have a contractual relationship with your own attorney by virtue of being his client, we are not of the view that such a relationship in itself presents you with a conflict when your attorney appears before the Board. You have advised that you worked with your personal attorney on several land use projects over the years and that some of these projects involved legal action against the County. However, such past associations currently do not present you with a conflict.

Accordingly, under the circumstances described, we find that no prohibited conflict of interest exists where you, a County Community Development Division Director, are present and participate in discussions when your attorney and former business associates and clients bring their projects before the County Commission.

CEO 94-5 -- March 10, 1994

CONFLICT OF INTEREST

HOUSING FINANCE AUTHORITY MEMBER SHAREHOLDER IN LAW FIRM REPRESENTING FINANCIAL INSTITUTIONS AND BOND UNDERWRITERS

To: Mark Herron, Attorney at Law (Tallahassee)

SUMMARY:

A prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, were clients of a housing finance authority member's law firm to do business with the authority. The member would hold a contractual relationship with business entities doing business with his public agency, regardless of whether or not the member personally handles the clients' legal business or the clients utilize the office location of the firm from which the member practices. Under the facts of this opinion, except in a limited circumstance, no prohibited conflict of interest would be created were subsidiary or affiliate companies of the firm's clients to do business with the authority. CEO's 80-25, 80-79, 81-66, 86-37, 91-24, and 92-11 are referenced.

QUESTION 1:

Would a prohibited conflict of interest be created were financial institutions or bond underwriters who are clients of a housing finance authority member's law firm, which has offices in several Florida cities, to do business with the authority, where the clients are generated and maintained by offices of the firm other than the office from which the member practices and where the clients have no direct or indirect contact with the member or with any attorneys practicing from the member's office?

Your question is answered in the affirmative.

By your letter of inquiry, we are advised that Luis Artime recently has been appointed as a member of the Housing Finance Authority of Dade County. In addition, you advise that the Authority was created by County ordinance as a "separate public body corporate and politic" to carry out and exercise all powers and public governmental functions set forth in Part IV, Chapter 159, Florida Statutes, that Section 159.608, Florida Statutes, sets forth various powers which may be authorized by a housing finance authority, and that Section 159.612, Florida Statutes, authorizes a housing finance authority to issue bonds.

The Authority member, you advise, is a shareholder in a law firm which has offices throughout the State; he practices from the firm's Miami office. From its various offices, you advise, attorneys with the firm serve as counsel for various financial institutions. Often a financial institution represented by the firm is not the same corporate entity as the corporate entity which may be seeking business from the Authority, although, you advise, both may be

subsidiaries or affiliates of the same corporate parent. Further, you advise that attorneys in the firm serve as counsel in litigation matters for entities which act as bond underwriters and may compete for the business of the Authority, and that representation of the bond underwriters is not carried out through the Miami office of the firm.

You question whether the member would have a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, were financial institutions or bond underwriters who are clients of the firm to do business with the Authority.

Section 112.313(7)(a), Florida Statutes, provides:

> CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee . . .; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties, or that would impede the full and faithful discharge of his public duties.

In CEO 80-79, Question 1, we found that Section 112.313(7)(a) would prohibit a housing finance authority member who was a partner in a law firm from serving on the authority should any of the lending institutions which were clients of his firm to do business with the authority, adhering to the legal principle that every member of a law firm holds a contractual relationship with every client of the firm. Since the issuance of CEO 80-79, we consistently have adhered to that reasoning in various situations, including CEO 81-66 (municipal development authority member shareholder in law firm retained by municipality), CEO 86-37 (mayor member of law firm, other members of which are involved with business entity contracting with city), and CEO 92-11 (Florida Transportation Commission member "of counsel" to law firm practicing eminent domain law).

We are not prepared to abandon our precedent merely because the member's law firm has offices in various cities and because the member and the other firm attorneys practicing from his particular firm office would not be handling the affairs of firm clients doing business with the Authority. The success of the firm as well as the member's remuneration as a shareholder still in part would be derived from the firm's total business, including the portion derived from the representation of clients doing business with the Authority, and thus the member would have a private economic tie that could fetter his full and objective performance as a member of the Authority in regard to Authority matters and duties concerning clients of the firm. The same would be true whether the member held an interest in a smaller firm or whether he held an interest in a large firm which operated from one large office housing many attorneys.

Compliance with the voting conflicts law (Section 112.3143, Florida Statutes), which would include abstention from voting or participation in matters involving clients of the member's law firm, does not obviate the conflict under Section 112.313(7)(a). Nothing in Section 112.313(7)(a) indicates that compliance with Section 112.3143 creates an exemption from it application; in contrast, other specific exemptions are provided in Section 112.313(12). Moreover, we do not believe that abstention should have the effect of creating

an exemption, because an Authority member's duties are not confined to voting on or participating in matters which come before the Authority for formal consideration, because the Authority likely would deal with matters that would affect clients of the member's firm although such matters might not directly inure to the special private gain of the clients and would thus not be within the scope of the voting conflicts law, and because abstentions themselves, particularly if numerous, could create a continuing or frequently recurring conflict or impediment to the full and faithful discharge of the member's public duties.

Accordingly, we find that a prohibited conflict of interest would be created were the Authority member's law firm to represent clients which are doing business with the Authority.

QUESTION 2:

Would a prohibited conflict of interest be created were a subsidiary or affiliate corporation of a client of the firm to do business with the Authority?

Except for the circumstance involving holding companies and subsidiaries wherein the parent company serves as a holding company for only one asset (the stock of the subsidiary corporation), we have followed the rule that each company is a separate business entity for purposes of Section 112.313(7)(a). See CEO 80-25 and CEO 91-24, for example. Therefore, unless the relationships of subsidiaries or affiliates with client companies of the member's law firm fall within that limited circumstance, we find that no prohibited conflict of interest would be created under the first clause of Section 112.313(7)(a). As to the second clause of Section 112.313(7)(a), we do not find (under the circumstances) that a continuing or frequently recurring conflict, or impediment to the full and faithful discharge of public duties, would be created.

This question is answered accordingly.

CEO 23-2—March 15, 2023

CONFLICT OF INTEREST; VOTING CONFLICT

MEMBER OF PROPERTY OWNERS ASSOCIATION SERVING ON THE WEST VILLAGES IMPROVEMENT DISTRICT BOARD OF SUPERVISORS

To: Lindsey Whelan, Counsel to the District (West Villages Improvement District)

SUMMARY:

A member of the West Villages Improvement District Board of Supervisors will have a prohibited conflict of interest under the second part of Section 112.313(7)(a), Florida Statutes, where he is a member and an officer of a homeowners' association suing his agency and where he is the designated corporate representative of the homeowners' association in the lawsuit. The Board Member would not have a voting conflict if he voted on matters pertaining to the litigation, due to the size of the class of people affected by such a vote, but the Board Member is encouraged to abstain from such a vote pursuant to Section 286.012, Florida Statutes, to avoid any appearance of impropriety. CEO 77-14, CEO 77-32, CEO 82-14, CEO 84-80, CEO 89-24, CEO 86-41, CEO 90-20, CEO 98-11, CEO 08-22, CEO 10-2, CEO 14-12, CEO 17-4, CEO 19-1, CEO 21-7, and CEO 22-5 are referenced.

QUESTION 1:

Will a member of the West Villages Improvement District Board of Supervisors have a prohibited conflict of interest if he maintains a membership in the nonprofit corporation functioning as the homeowners' association for a community within the District, serves as an officer on that nonprofit corporation, and serves as the designated corporate representative of the nonprofit corporation in a lawsuit against the District?

This question is answered as follows.

You write your inquiry on behalf of a member ("the Board Member") of the West Villages Improvement District Board of Supervisors. According to your inquiry, the Board Member was elected to a four-year term in November 2022. The Board Member was sworn in and seated on December 15, 2022, at which meeting he requested that you, as District counsel, seek this opinion. The Board of Supervisors has five members. At present,[1] four of the seats on the Board of Supervisors are elected on a one-acre, one-vote basis, but the seat occupied by the Board Member is filled through a district-wide election by qualified electors of the West Villages Improvement District ("the District") rather than on a one-acre, one-vote basis.

The District spans nearly 12,000 acres. Within the bounds of the District lies the Gran Paradiso community, which spans approximately 1,000 acres and has approximately 1,935 residential units. The Gran Paradiso community is operated by the Gran Paradiso Property Owners Association ("the Property Owners Association"). The Board Member owns one residential property within the bounds of the Gran Paradiso community and, for that reason, is required to be a member of the Property Owners Association, which is a nonprofit corporation serving as a homeowners' association pursuant to Chapter 720, Florida Statutes.[2] In addition to being a member of the Property Owners Association, and prior to his election to the Board of Supervisors, the Board Member became a member of the Board of Directors of the Property Owners Association ("Board of Directors") in March 2022.

The District and the Property Owners Association transact business together through the District's provision of irrigation water to the Property Owners Association.[3] In December 2020, the Property Owners Association began contracting with the District for the provision of irrigation water at specified rates. Recently, the Property Owners Association initiated a lawsuit against the District, disputing the service and seeking lower rates for the Property Owners Association.[4] The Board Member has been heavily involved in the lawsuit.

According to your inquiry, he has recently served as the designated corporate representative of the Property Owners Association in the lawsuit, though other corporate officers were available to do so instead, and began testifying as a witness against the District at a preliminary evidentiary hearing in December 2022 regarding a motion for preliminary injunction.[5]

With this background, you ask whether the Board Member's relationship with the Property Owners Association creates a prohibited conflict of interest for him.

To answer this question, analysis under Section 112.313(7)(a), Florida Statutes, is needed. Section 112.313(7)(a) states:

> No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

There are two prohibitions in Section 112.313(7)(a). The first prohibition of this statute proscribes a public officer from having any contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second prohibition of this statute proscribes a public officer from having a contractual relationship that would create a continuing or frequently recurring conflict of interest or would create an impediment to the full and faithful discharge of his or her public duties. This requires an examination of the public officer's duties and a review of his or her private employment or contractual relationship "to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which tempts dishonor." Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982) (internal quotations omitted).

Regarding the first part of Section 112.313(7)(a), we have opined in the past that a public officer's rank-and-file membership in a nonprofit corporation creates a contractual relationship between the public officer and the nonprofit corporation. See CEO 19-1, CEO 14-12, and CEO 10-2. We have also opined that "a business entity is doing business with an agency where the parties have entered into a lease, contract, or other type of legal arrangement under which one party would have a cause of action against the other in the event of a default or breach." CEO 86-24. Initiating, maintaining, and settling a lawsuit between a business entity and an agency, however, does not constitute "doing business" under the first part of Section 112.313(7)(a). See CEO 22-5, CEO 17-4, and CEO 77-14.

We now analyze the Board Member's situation under the first part of Section 112.313(7)(a). The Board Member has a contractual relationship with the Property Owners Association because he is a member of the nonprofit corporation. While the lawsuit does not constitute "doing business" under the first part of Section 112.313(7)(a), we nonetheless find that the Property Owners Association is doing business with the District because it has contracted with the District for the purchase of irrigation water. The arrangement constitutes "doing business" because the Property Owners Association could initiate, and in fact, has initiated, a cause of action against the District to resolve rights and obligations under that contract. Where the Board Member has a contractual relationship with the Property Owners Association (through his nonprofit membership) and that entity is doing business with the District (through the irrigation water contract), the elements of the first prohibition of Section 112.313(7)(a) are met. In the absence of an exception, a prohibited conflict of interest would be created.

An exception, however, is applicable to negate the conflict. Section 112.313(12)(c), Florida Statutes, says that no person shall be held in violation of Section 112.313(7)(a) where "[t]he purchase or sale is . . . for any utilities service[.]" In CEO 86-41, we found that a city's sale of water to a private business entity that retained a city council member as an engineer was a purchase or sale for a utility service that qualified for this exception. Here, in the Board Member's case, where we also have the sale of water by an agency to a private entity, the exception also applies to negate the conflict.[6]

We turn now to our analysis under the second part of Section 112.313(7)(a). We have in the past reviewed similar situations to make a determination as to whether a public officer's private contractual

relationships coincide with his or her public duties to create a situation that tempts dishonor as Zerweck requires.

For example, in CEO 82-14, we determined that membership in a voluntary, unincorporated association constituted a contractual relationship with a business entity, but that mere membership in that association, without additional facts indicating the public officer could be tempted to dishonor their public responsibilities, was not enough to find a continuing and frequently recurring conflict under the second part of Section 112.313(7)(a).

In CEO 90-20, a member of an unincorporated association challenging the city's special tax assessments in court was elected to the city council. Upon his election, he resigned his post as chairman of the unincorporated association and had his name removed as one of the named plaintiffs in the class action lawsuit. Under those facts, specifically relying upon the councilmember's efforts to divorce himself in his private capacity from the ongoing lawsuit and remove himself as a representative of the group in the lawsuit, we found no prohibited conflict of interest under the second part of Section 112.313(7)(a), even though he remained a member of the association.

In CEO 08-22, we considered a city councilmember who was a member and the chairman of a registered political action committee that was suing his city. The city councilmember terminated his service as an officer or director of the political action committee, though he continued to be a dues-paying member of it. We found that where the councilmember merely had membership in the organization that was suing his agency, but was not an officer or director, a prohibited conflict of interest was not created under the second part of Section 112.313(7)(a).

It is clear from these three opinions that while membership in an unincorporated association or political action committee creates a contractual relationship with that entity, that membership is not enough to create a continuing or frequently recurring conflict under the second part of Section 112.313(7)(a). However, when the membership is coupled with an additional incentive to compromise one's public duties, such as serving as an officer or director of the organization, or serving as its designated corporate representative in litigation, the prohibition in the second part of the statute will apply.

We believe the analytical framework set forth in CEO 82-14, CEO 90-20, and CEO 08-22 is applicable to members of nonprofit corporations, as well. In the Board Member's case, a conflict of interest under the second part of Section 112.313(7)(a) will be present if he continues to be a representative of the Property Owners Association (nonprofit corporation) in the lawsuit and continues to be an officer in the Property Owners Association (nonprofit corporation) while he maintains a membership in the nonprofit organization and holds office on the Board.[7] While he serves as an officer and as a designated corporate representative of the Property Owners Association, he is in a situation where he owes obligations to those on both sides of the lawsuit and he could be tempted to compromise his public responsibilities.

To avoid a conflict of interest going forward, he should either (1) end his membership in the Property Owners Association (eliminating the contractual relationship that is a predicate to finding a violation),[8] (2) resign as an officer of the Property Owners Association and remove himself from all representative capacities in the lawsuit (eliminating the facts and circumstances that might tempt him to dishonor his public responsibilities),[9] or (3) leave his public position.[10]

QUESTION 2:

Would the Board Member have a voting conflict if the Board were posed with a vote concerning the litigation between the District and the Property Owners Association?

This question is answered as follows.

You ask whether a voting conflict will exist if the Board Member votes on a matter pertaining to the litigation between the District and the Property Owners Association.

Section 112.3143(3)(a) provides:

> No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any

> principal by whom he or she is retained or to the parent organization or subsidiary of a corporation parent by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would insure to the special private gain or loss of a relative or business associate of the public officer.

The statute prohibits the Board Member from voting on any measure that will inure to his special private gain or loss, or to the special private gain or loss of a principal by whom he is retained, a relative, or a business associate. There is nothing in the facts presented to indicate that a principal by whom the Board Member is retained, a relative, or a business associate would be affected by a vote pertaining to the litigation. The Property Owners Association is not a principal by whom the Board Member is retained because it does not compensate him. See CEO 84-800. Therefore, we are only concerned with whether the vote would create a special private gain or loss for the Board Member himself.

We have opined before that where the size of the class of people affected by a vote is sufficiently large, and a public officer's proportional interest in the class of those affected by the vote is sufficiently small, a public officer's gain or loss from the vote cannot be said to be "special" as would be required to find a voting conflict under Section 112.3143(3).

Here, although a vote relating to the litigation could create a gain or loss for the Board Member himself, depending on the specific nature of the vote, he is just one member of the Property Owners Association, which has 1,935 residential units[11] that would be affected in substantially the same manner by the litigation. For this reason, a voting conflict would not be created if the Board Member voted on a matter pertaining to the litigation.[12] That being said, we believe voting on such a matter would create the appearance of impropriety and raise questions about the Board Member's objectivity, given his private interests and level of involvement in the lawsuit. We do not think it would instill public confidence in government for the Board Member to participate in such a vote and we would strongly encourage him, as we suggested to a similarly-situated public officer in CEO 21-7, to invoke Section 286.012, Florida Statutes, and abstain from such a vote, instead.[13]

If the Board Member does choose to vote on such a matter, he must take great care not to violate Section 112.313(6), Florida Statutes, and Article II, Section 8(h)(2), Florida Constitution, which prohibit public officers and employees from abusing or misusing their positions with a wrongful intent to achieve a benefit for themselves or certain others.

QUESTION 3:

> Would the Board Member have a prohibited conflict of interest if a nonprofit corporation and political committee of which he is an officer, or the Board Member personally, litigate against the City of North Port?

This question is answered in the negative.

In your inquiry, you explain the Board Member also is the chairman of West Villagers for Responsible Government, Inc. ("WVRG"), a nonprofit corporation and a political action committee. In October 2020, WVRG began petitioning the City of North Port ("the City") to de-annex a significant portion of lands from the City's geographical boundaries. These lands, however, also fall within the District's boundaries. In October 2022, the City rejected the petition to de-annex. In December 2022, WVGR and the Board Member in his personal capacity filed a Petition for Writ of Certiorari with the Twelfth Judicial Circuit Court to quash the City's order regarding de-annexation. While the District is not a party to the litigation, you estimate it could incur substantial costs as a consequence of the proposed de-annexation, including costs to renegotiate agreements with the County, costs to obtain permits with the County, and legal and engineering costs to amend its enabling legislation and effectuate the separation from the City.

With this background, you ask whether the Board Member will have a prohibited conflict of interest as a result of the litigation with the City.

Even assuming the Board Member holds a membership in WVRG, there is no indication that WVRG is doing business with or is regulated by the District, which is the Board Member's agency. Thus, there is not a conflict under the first part of Section 112.313(7)(a). Regarding the second part of Section 112.313(7)(a), once

again assuming that the Board Member holds a membership in WVRG, there is no indication that the Board Member's public responsibilities to the District bear any relation to the lawsuit against the City. The District is not a party to the case and there is no official decision-making to be taken by the Board of Supervisors that would affect the course of the litigation. Although the District could have substantial costs as a consequence of the lawsuit, those costs are not damages or fees derived from engagement in the litigation, but business expenses that will be necessary to adapt to a ruling that orders de-annexation. Because the public position of the Board Member and his private interests concerning the City lawsuit do not coincide to tempt him to dishonor his public responsibilities, there is no conflict under the second part of Section 112.313(7)(a).[14]

You ask whether District votes regarding development matters in the proposed de-annexation areas would create a voting conflict for the Board Member. Because it does not appear that votes on development in the de-annexation areas would create a special private gain or loss for the Board Member or any relative, business associate, or principal by whom he is retained, there is no voting conflict under Section 112.3143(3).

Your questions are answered accordingly.

ORDERED by the State of Florida Commission on Ethics meeting in public session on March 10, 2023, and **RENDERED** this 15th day of March, 2023.

Glenton "Glen" Gilzean, Jr., *Chair*

[1] Originally, all five of the Board seats were elected on a one-acre, one-vote basis. See Chapter 2004-456, Section 5(1), Laws of Florida. In compliance with Section 189.041(3), Florida Statutes, the composition of the Board has begun to transition such that one of the Board seats is elected by the qualified electors of the District.

[2] Section 720.301(9), Florida Statutes, defines a "homeowners' association" as:

> a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute.

Relevant to this inquiry, a homeowners' association has the power to commence litigation. Section 720.303(1), Florida Statutes, states in part:

> Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of $100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained.

[3] Your inquiry does not detail any other ongoing business transactions between the District and the Property Owners Association.

[4] We note that the Board Member has contacted Commission staff to dispute the Requestor's (District counsel's) description in the ethics inquiry of certain details pertaining to the lawsuit. The particulars of the lawsuit are not relevant to this opinion, except than that there is a lawsuit and the Board Member is involved in it, and there seems to be no material dispute over those two facts. To the extent that the Board counsel who requested the opinion and the Board Member seem to disagree over the facts, we reassure both that the differences are immaterial for purposes of this analysis.

[5] Apparently, direct testimony had occurred, but cross-examination and redirect had not. Further hearings are scheduled for February 2023 and it is expected the Board Member's witness testimony would conclude then.

[6] A second, though less permanent, exception is also available. We have found in the past that Section 112.316, Florida Statutes, operates to effectuate a "grandfathering" of a contractual relationship where a public officer's contractual relationship with a business entity and that business entity's "doing business" relationship with the public officer's agency both precede the public officer's assumption of office, at least until the contract terms are changed or amended. See CEO 22-5 for a lengthy discussion of grandfathering under Section 112.316 as applied to conflicts under the first part of Section 112.313(7)(a).

[7] We are not aware of any exceptions that would be applicable to the scenario presented to negate the conflict. We find that the exception in Section 112.313(7)(a)1., Florida Statutes, does not apply here given that the conflict derives from the representation of a business entity before and/or against the Board Member's agency. As we opined in CEO 77-32, the exception does not apply to negate a conflict of this nature. The exception found in Section 112.313(15), Florida Statutes, which creates an exception for those who are employed by a tax-exempt organization under s. 501(c) of the Internal Revenue Code and meet certain other criteria, is also not applicable. As we discussed in CEO 98-11, Note 2, this exception "speaks to the holding of employment and not the holding of a contractual relationship," and the Board Member is not employed by the nonprofit corporation; he holds a contractual relationship with it through his membership.

[8] We recognize the difficulties with this option given that "membership [in the homeowner's association] is a mandatory condition of parcel ownership." § 720.301(9), Fla. Stat.

[9] Assuming the Board Member is offering uncompensated testimony (e.g., that he is not an expert witness that has been retained to testify against his agency), we believe the Board Member can continue to be a fact witness in the case. See CEO 91-66 and CEO 94-32. The Code of Ethics does not operate to prevent public officers from offering uncompensated, truthful testimony in a court of law, even if that uncompensated testimony might serve interests counter to the agency's position in the litigation.

[10] In correspondence and telephonic communications with Commission staff, the Board Member has asked whether abstaining from votes concerning the lawsuit would cure his conflicting contractual relationship. As we opined in CEO 94-5:

> Compliance with the voting conflicts law (Section 112.3143, Florida Statutes), which would include abstention from voting or participation in matters involving [those with whom the public officer has a contractual relationship], does not obviate the conflict under Section 112.313(7)(a). Nothing in Section 112.313(7)(a) indicates that compliance with Section 112.3143 creates an exemption from [its] application . . . . Moreover, we do not believe that abstention should have the effect of creating an exemption, because [a public officer's] duties are not confined to voting on or participating in matters which come before [his or her board] for formal consideration[.]"

See also CEO 12-9; accord In re Milton West, Complaint No. 16-032, Final Order No. 17-057, aff'd by sub nom. Milton West v. Comm. On Ethics, 5D17-2075 (Fla. 5th DCA 2018).

[11] The Board Member has informed Commission staff he believes there are over 1,800 individual property owners of the 1,935 residential units in the Gran Paradiso community.

[12] We note that the exception to the voting conflict law found in Section 112.3143(3)(b), Florida Statutes, does not apply to the Board Member because the Board Member was not elected on a one-acre, one-vote basis, even though his colleagues on the Board were.

[13] Section 286.012 allows a public officer to abstain from a vote if there is or appears to be a possible conflict under Section 112.3143 or Section 112.313. If a public officer does abstain for that reason, Section 286.012 requires them to comply with the disclosure requirements of Section 112.3143.

[14] If, however, the District joins the lawsuit at some point, then the facts will resemble the scenario presented in Question 1.