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REPLY TO: Miami

August 10, 2021

Millie Fulford
Florida Commission on Ethics
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Tallahassee, FL 23217-5709
FULFORD.MILLIE@leg.state.fl.us

Re: *In re Commissioner Nikki Fried*
FCOE Case No. 21-097
Response to Complaint

Dear Ms. Fulford:

Thank you for the opportunity to respond to the Complaint submitted by Evan Power. The Complaint is meritless and should be dismissed for legal insufficiency. The Complaint is nothing more than a calculated political effort to impugn Commissioner Fried's integrity during the election season and should be dismissed outright for lack of legal sufficiency and probable cause.

Commissioner Fried remains available to assist the Commission in its resolution of the Complaint.

INTRODUCTION.

Commissioner Fried is a first-time public official elected in 2018 and sworn into public office in January 2019. Prior to her campaign and election, she had no experience with Form 6 Florida Full and Public Disclosure of Financial Interests. When completing her Form 6 filings and Amendments, she relied to the best of her knowledge on the financial information available to her and the assistance of an experienced lawyer, Jason B. Blank, who prepared and executed each Form 6, stating:

I, Jason B. Blank, prepared the CE Form 6 in accordance with Art. II, Sec. 8, Florida Constitution, Section 112.3144, Florida Statutes, and the instructions to the form. Upon my reasonable knowledge and belief, the disclosure herein is true and correct.

Guided by Mr. Blank's experienced assistance, Commissioner Fried disclosed her financial interests in as complete a manner as possible and amended the Form 6 when new and updated information was brought to her and Mr. Blank's attention.

A. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF PERSONAL KNOWLEDGE.

The complainant has no personal knowledge of the facts and allegations upon which the Complaint is based. The Complaint is based entirely on conjecture and the speculative comparison of Form 6 filings and corresponding amendments, all filed accurately, based on the reasonable knowledge and belief of Commissioner Fried's trusted legal advisor and her own knowledge of the relevant financial information.

For this reason alone, the Complaint should be dismissed for legal insufficiency or a lack of probable cause.

B. "COUNT I" OF THE COMPLAINT SHOULD BE DISMISSED DUE TO THE ABSENCE OF FACTS THAT COMMISSIONER FRIED FAILED TO DISCLOSE LOBBYING INCOME EARNED IN 2017 AND 2018.

Commissioner Fried accurately reported her income for 2017 and 2018 on her annual Form 6 filings and Form 6X Amendments.

Although the Complaint asserts vaguely that Commissioner Fried must have received income in addition to that reported on her 2017 and 2018 Form 6 filings, no facts are identified to support that speculative claim. Commissioner Fried reported all her earned income in compliance with Florida law and the instructions for CE Form 6. When supplemental information came to Mr. Blank's attention based on additional information not available at the time of the initial filings, he promptly amended the financial disclosures with

the submission of CE Form 6X Amendments. The income information disclosed therein is accurate.

The Complainant's speculative "conflict" claim involving her minor, passive holding in Harvest Health is not supported by any facts and does not represent any conflict. Moreover, Commissioner Fried's disclosure of her financial interest in Harvest complies fully with all financial disclosure requirements.

C. "COUNT II" OF THE COMPLAINT SHOULD BE DISMISSED DUE TO THE ABSENCE OF FACTS THAT COMMISSIONER FRIED FAILED TO AMEND HER NET WORTH ON THE 2017 AND 2018 FORM 6.

Commissioner Fried's Form 6 filings for 2017 and 2018 correctly report her net worth in accordance with the Instructions for Completing Form 6. The timely filing of Form 6X Amendments did not alter her net worth, and no contrary facts have been shown to exist by the complainant. In short, Commissioner Fried's net worth, computed as the difference between all assets and liabilities for the reportable period, is accurately stated.

D. "COUNT III" OF THE COMPLAINT SHOULD BE DISMISSED DUE TO THE ABSENCE OF FACTS THAT COMMISSIONER FRIED FAILED TO DISCLOSE LOBBYING INCOME FROM COLODNY FASS IN 2017 AND 2018.

Commissioner Fried earned no lobbying income from the Colodny Fass law firm in 2017 and 2018. Accordingly, she had no income to report.

The Complaint, bereft of any supporting documentation for its false accusation, does not provide any facts underlying its claim, and must be dismissed. More importantly, as a Complaint submitted under oath to the Florida Commission on Ethics, the Complaint is materially false and known to be false by the complainant, thereby subjecting the complainant to criminal and civil penalties for submitting a false and fraudulent document under oath. The complainant should be referred to the appropriate authorities for investigation and prosecution.

E. “COUNT IV” OF THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE FORM 6 FILINGS ACCURATELY REORTED NET WORTH AND NO GIFTS WERE RECEIVED.

The Complaint speculates that the Form 6 filings must be inaccurate because Commissioner Fried reported “exponential increases in her net worth and her household gifts and personal effects since taking public office or failed to report gifts ...” During the time frame, Commissioner Fried reported her required financial interests accurately. She did not receive any reportable gift – none.

The Form 6 filings accurately value Commissioner Fried’s personal residence that she shares with her fiancé at its total value, consistent with the explanation in the Instructions for Completing Form 6: “However, assets that are held as tenants by the entirety or jointly with right of survivorship, including bank accounts held in such manner, must be reported at 100% of their value.”

Florida law contains the same definition at Section 112.3144, Florida Statutes:

(6)(a) With respect to reporting, assets valued in excess of \$1,000 which the reporting individual holds jointly with another person, the amount reported shall be based on the reporting individual’s legal percentage of ownership in the property. However, assets that are held jointly, with right of survivorship, must be reported at 100 percent of the value of the asset. For purposes of this subsection, a reporting individual is deemed to own a percentage of a partnership which is equal to the reporting individual’s interest in the capital or equity of the partnership.

Accordingly, the Form 6 filings properly reported the residence at its full value.

F. “COUNT V” OF THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE FORM 6 FILINGS REPORTED ASSETS IN RETIREMENT ACCOUNTS AS REQUIRED.

The subject Form 6 filings reported Commissioner Fried's retirement account holdings as directed by the instructions for Completing Form 6. The assets disclosed in the retirement accounts are held precisely as disclosed, and do not represent holdings in individual products. The accounts are the products themselves and are similar to holding funds in a money market account. These retirement investments are not separately divided into individual funds or products.

For various products held in investment accounts, the Form 6 filings identified the individual assets, describing them as named, in accordance with the CE Form 6 Instructions:

- FESGX: First Eagle Global Fund Class C
- GFACX: The growth Fund of America Class C
- BALCX: American Balanced Fund Class C
- FDRXX: Fidelity Government Cash Reserves
- FFFGX: Fidelity Freedom 2045

Thus, the Form 6 reporting fully comports with the Instructions for CE Form 6 that "assets also include investment products held in IRAs, brokerage accounts, and the Florida College Investment Plan. Note that the product contained in a brokerage account, IRA, or the Florida College Investment Plan is your asset – not the account or plan itself." See CEO 12-10. Accordingly, the reporting is correct.

CONCLUSION.

The complainant knows or is reasonably aware that his sworn Complaint is materially false. The Form 6 filings at issue were accurately completed in compliance with legal requirements. The Complaint offers no factual support for its speculative conclusions.

Any identified deficiencies or inaccuracies in the Form 6 filings and Amendments constitute immaterial, inconsequential, and de minimis errors. In accordance with Rule 34-5.002(4)(b), the Complaint should be dismissed. If a correction is required, Commissioner Fried will promptly comply with any notification issued by the Commission.

In summary, the Complaint should be dismissed for legal insufficiency and lack of probable cause.

Respectfully submitted,

Benedict P. Kuehne

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