

JUN 14 2022

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

In re: Mark Cagni,

Complaint No. 21-238

Respondent.
_____ /

ADVOCATE'S RECOMMENDATION

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

RESPONDENT

Respondent, Mark Cagni, serves as a member of the Building/Flood Board of Adjustment and Appeals for the City of Clearwater.

JURISDICTION

The Executive Director of the Commission on Ethics ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on May 26, 2022.

ALLEGATION

Respondent is alleged to have violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, by willfully failing to timely file a 2018 CE Form 1, "Statement of Financial Interests."

APPLICABLE LAW

Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, provides as follows:

If a person holding public office or public employment fails or refuses to file an annual statement of financial interests for any year in which the person received notice from the Commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section, regardless of whether the fine imposed was paid or collected, the commission shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful. Such investigation and hearing must be conducted in accordance with s. 112.324. Except as provided in s. 112.324(4), if the commission determines that the person willfully failed to file a statement of financial interests, the commission shall enter an order recommending that the officer or employee be removed from his or her public office or public employment.

In order to establish a violation of Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, the following elements must be proved:

1. Respondent is currently a public officer or employee.
2. Respondent must have failed or refused to file an annual statement of financial interests.
3. Respondent must have received notice from the commission regarding the failure to file for the corresponding year.
4. The maximum automatic fine authorized for failing to file must have accrued.
5. Respondent's failure to file is willful.

ANALYSIS

Respondent has served as a member of the Building/Flood Board of Adjustment and Appeals for the City of Clearwater since July 19, 2017. (ROI 1, 4 22) This position required the filing of a CE Form 1, "Statement of Financial Interests." (ROI 1)

All correspondence regarding this matter was mailed to Respondent at 144 Devon Drive, Clearwater, FL 33767-2438, which Respondent confirmed was his correct address. (ROI 6, 10)

On May 22, 2019, the Pinellas County Supervisor of Elections (SOE) mailed an initial filing packet containing a blank 2018 CE Form 1 and information regarding Respondent's obligation to file a financial disclosure form to Respondent's Devon Drive address. (ROI 6, Exhibit A-1) Respondent failed to file his 2018 CE Form 1 with the SOE by the original due date of July 1, 2019. §112.3145(2)(b), Fla. Stat.

On July 2, 2019, the SOE mailed Respondent a courtesy reminder letter notifying him that his 2018 CE Form 1 had not been received and that failure to file by September 1, 2019 would result in an automatic fine of \$25 per day. (ROI 7, Exhibit A-2)

A "Delinquency Notice" was sent by SOE to Respondent via certified mail on July 30, 2019 and was signed for by Respondent on August 3, 2019. (ROI 8, Exhibit A3-4) This notice advised Respondent that a fine of \$25 per day, up to the maximum penalty of \$1,500, would be imposed if his form was not received by September 3, 2019. (ROI 8) Respondent was also advised that failure to file could result in removal from public office. (ROI 8)

SOE Voter Outreach Manager, Alex Pena-Rosado, emailed Respondent on July 29, 2019 advising Respondent to file his form. (ROI 9) In addition, Pena-Rosado emailed a reminder notification to Respondent on August 13, 2019. (ROI 11, Exhibit A5-6)

On August 19, 2019, the Commission on Ethics (Commission) mailed Respondent a "Courtesy Postcard" reminding him of the filing obligation and the potential for a fine if the form is not filed by September 2, 2019. (ROI 11, Exhibit A7)

On August 20, 2019, Pena-Rosado emailed Respondent again notifying him that his form had not yet been received. (ROI 12, Exhibit A8) He also emailed Clearwater City Clerk and Respondent's agency's Financial Disclosure Coordinator, Rosemarie Call, on August 22, 2019 advising them that the SOE office had not received Respondent's 2018 CE Form 1. (ROI 13, Exhibit A9-10)

On August 27, 2019, Pena-Rosado emailed Call requesting an email and phone number for Respondent in order to contact him directly. (ROI 14) Call responded on the same date and advised Pena-Rosado that her office had sent "several emails and made several telephone calls" to Respondent. (ROI 14) Later that day, Pena-Rosado personally spoke to Respondent about the matter and followed up their conversation with an email stating that his form had not been received and the end of the grace period was quickly approaching. (ROI 14, Exhibit A11-13)

On September 3, 2019, Pena-Rosado emailed Respondent regarding the grace period ending and the automatic fine that would be imposed. (ROI 15) Almost two hours after receiving the email, Respondent responded and advised that he had filed his CE Form 1. (ROI 15) Respondent also stated, "that the fine was a stiff penalty for a volunteer board that meets once a year." (ROI 15, 22, Exhibit A14-15) Pena-Rosado immediately emailed the Commission staff to confirm that Respondent's form had not been received. (ROI 15, Exhibit A14-15)

Commission staff then emailed Call to ascertain whether Respondent was serving in the same public position at the end of 2018, which was confirmed by Call. (ROI 16, Exhibit A16-17)

On September 6, 2019, the Commission mailed Respondent a “Courtesy Notice of Fines Accruing” informing him that he was being assessed a \$25 per day fine. (ROI 17, Exhibit A18)

On July 19, 2021, the Commission mailed Respondent a “Notice of Assessment of Automatic Fine” informing Respondent he had been fined the maximum amount of \$1,500 and included a notice with instructions on how to appeal the fine, along with a blank 2018 CE Form 1. (ROI 18, Exhibit A19-21) The notice was delivered to Respondent’s Devon Drive address on July 21, 2021 but it is unclear who signed for the document. (ROI 18, Exhibit A22-23)

On September 20, 2021, the Commission sent a “Final Notice of Assessment of Automatic Fine for Failure to Timely File Form 1, Statement of Financial Interests,” to Respondent advising him that by neither paying the fine nor filing an appeal, he waived his right to appeal the assessed fine and, if the fine was not paid by October 21, 2021, an order would be entered and the fine would be referred to a collection agency. (ROI 20, Exhibit A24)

On December 9, 2021, the Commission sent a “Notification of Issuance of Default Final Order,” to Respondent informing him that, if he did not pay the assessed fine by January 10, 2021, the fine would be referred to a collection agency and a service fee of 13% would be added to the fine. (ROI 21, Exhibit A25-28) Respondent was advised that a copy of the default final order would be sent to his appointing authority. (ROI 21, Exhibit A25-28)

Respondent communicated via telephone that he timely filed his 2018 Form 1 and would provide copies of his form to the Commission. (ROI 23) He also wanted to appeal the automatic fine assessed against him and, on March 25, 2022 at his request, the appeal form was emailed to him. (ROI 24) His reason for not previously filing an appeal was because he was convinced he had filed his 2018 Form 1. (ROI 24)

Between March 31, 2022 and May 11, 2022, the Commission's investigator left over a dozen unreturned telephone messages for Respondent on his voice mail, which identified the telephone number as belonging to Respondent. (ROI 25)

Respondent's filing history is as follows:

2017 – CE Form 1 filed 15 days late and assessed a \$375 fine which remains unpaid;¹

2018 – the subject CE Form 1 has not been filed with the SOE and Respondent has not appealed the automatic fine; and

2019 and **2020** – CE Form 1s timely filed.
(ROI 5, 26)

Respondent's claim that he filed his 2018 CE Form 1 is disingenuous when two governmental agencies and at least four governmental employees (Call, Pena-Rosado, Commission investigator and staff) sent a minimum of 10 letters, made an untold number of phone calls, and sent numerous emails to Respondent *before* the maximum fine accrued advising him of his obligation to file. Respondent apparently took no action to verify that he had indeed filed his 2018 CE Form 1. Even after the fine accrued, those persons' efforts did not stop.

A tremendous amount of resources were utilized in an attempt to get one person – Respondent – to comply with the law. His actions indicate that his failure to timely file his 2018 CE Form 1 was a “willful” violation of the law.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes.

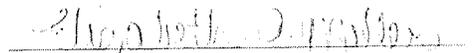
¹ The \$375 fine for his late 2017 Form 1 filing was referred to a collection agency on December 13, 2019. (ROI 5)

RECOMMENDATION

It is my recommendation that,

There is probable cause to believe that Respondent violated Section 112.3145(9)(c) [formerly Section 112.3145(8)(c)], Florida Statutes, by willfully failing to timely file a 2018 CE Form 1, "Statement of Financial Interests."

Respectfully submitted this 14th day of June, 2022.


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