

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

CONFIDENTIAL

In re RODNEY J. BRADEN,)
)
 Respondent.)
_____)

Complaint No. 21-204

DETERMINATION OF INVESTIGATIVE JURISDICTION
AND ORDER TO INVESTIGATE

UPON REVIEW of this complaint, I find as follows:

1. This complaint was filed by Samantha Deeter of North Palm Beach, Florida.
2. The Respondent, Rodney J. Braden, allegedly serves as a member of the City Council for the City of Destin.
3. The complaint alleges that the Respondent failed to disclose his ownership interest in ML & RB, LLC, as intangible personal property in Part D of his 2017, 2018, 2019, and 2020 CE Form 1, "Statement of Financial Interest," filings. The complaint alleges the Respondent has had an ownership interest in the corporation since it was incorporated in 2017.¹ This indicates possible violations of Section 112.3145, Florida Statutes, by the Respondent.
4. The complaint also alleges the Respondent failed to properly disclose, in any disclosure filing, his indirect ownership in three pieces of property owned by ML & RB, LLC. In particular, the complaint claims the company owned the first property during 2017 and 2018, the second property during 2018 and 2019, and purchased the third parcel—which it still owns—

¹ The allegation is not immaterial, inconsequential or de minimis because, if true, it could constitute failure to accurately disclose intangible personal property in the Respondent's 2017, 2018, 2019, and 2020 CE Form 1 filings.

during 2019.² This indicates possible violations of Section 112.3145, Florida Statutes, by the Respondent.

5. While the complaint raises other allegations involving errors made by the Respondent while completing his financial disclosure forms, as well as several allegations unrelated to financial disclosure, these claims—which are detailed below—do not provide a legally sufficient basis for investigation.

6. In particular, the complaint alleges the Respondent "omitted a large amount of relevant financial information" on his 2014, 2015, and 2016 CE Form 1 filings—and, indeed, includes the Respondent's 2015 CE Form 1 and 2016 CE Form 1—although it does not specify the nature of these omissions. This general allegation that "relevant financial information" was omitted, without more, is conclusory; and while material assertions of fact are taken as true in an analysis of legal sufficiency, conclusions or unwarranted deductions of fact are not a sufficiently specific basis for investigation. Moreover, any errors contained in the Respondent's 2014 and 2015 CE Form 1 filings are beyond the applicable statute of limitations for the Commission. Section 112.3231, Florida Statutes, establishes a five-year statute of limitations for ethics complaints. Considering that the Respondent submitted his 2014 CE Form 1 on May 28, 2015, and his 2015 CE Form 1 on July 22, 2016, and that the instant complaint was not filed until November 1, 2021, over five years later, allegations concerning the Respondent's 2014 and 2015 CE Form 1 filings are beyond the limitations period.³

² The allegation is not immaterial, inconsequential or de minimis because, if true, it could constitute failure to accurately disclose real property in the Respondent's 2017, 2018, 2019, and 2020 CE Form 1 filings.

³ Rule 34-5.002(1), Florida Administrative Code, permits the Commission's Executive Director to obtain information from public records when reviewing the legal sufficiency of allegations in a complaint. Information concerning the dates on which the Respondent submitted his 2014 and

7. The complaint also alleges the Respondent failed to disclose on any disclosure filing the income received by ML & RB, LLC, from property sales. However, this allegation is not legally sufficient to indicate a possible violation of Section 112.3145, Florida Statutes. The instructions to Part A (Primary Sources of Income) on the CE Form 1 require the filer to disclose, as a primary source of income, only "gross income" exceeding certain thresholds that the filer received during the filing period "in [his or her] own name or by any other person for [the filer's] use or benefit." See also Section 112.3145(3), Florida Statutes. The instructions to Part A do not require the filer to disclose income received separately by companies or corporations in which the filer has an ownership interest. And while the instructions require the filer to disclose in Part B (Secondary Sources of Income) major customers, clients, and other sources of income to businesses in which a filer owns an interest, the need to disclose a secondary source of income is only triggered when certain reporting thresholds described in the instructions are met. Here, the complaint's allegations do not adequately address whether the reporting thresholds requiring disclosure under Part B were met for any form year in question. We note that the complaint process is not designed to serve as a general review or audit function for disclosure filings. The Complainants' doubt or skepticism about the accuracy or veracity of a filing, or their observation that something was omitted, is not enough to trigger the Commission's investigative jurisdiction absent a factual allegation that an omitted item exists and actually met the reporting thresholds.

8. The complaint further alleges the Respondent failed to properly disclose on any financial disclosure filing his investment accounts at Fidelity Investments, although this allegation as well is not legally sufficient to indicate a possible violation of Section 112.3145, Florida

2015 CE Form 1 filings is publicly accessible through the Commission's website (ethics.state.fl.us).

Statutes. The instructions to the CE Form 1 indicate it is only the investment product(s) held within an investment account—not the account itself—that might need to be disclosed as "Intangible Personal Property" on Part D of a CE Form 1, provided that the requisite threshold is exceeded with respect to the investment product, and the complaint contains no allegations concerning the Respondent's investment products.

9. The complaint also alleges the Respondent has engaged in mortgage fraud with his former spouse and has not paid his property taxes. However, even accepting these claims as true, they do not provide an adequate basis for investigation under the Code of Ethics—or any other prohibition within the Commission's jurisdiction—as such conduct does not involve the use of the Respondent's publicly-held position or public resources, but, rather, actions taken in his private capacity.

10. The complaint also brings certain claims that cannot form the basis of a violation by the Respondent of the Code of Ethics—or of any other prohibition over which the Commission has jurisdiction—because, even accepting the allegations as true, they concern the conduct of individuals other than the Respondent. In particular, the complaint alleges the Respondent's former spouse has forged signatures and has notarized documents without authority. The complaint also alleges that other unidentified public officers have acted "unethically, fraudulently, [and] against the laws of the State of Florida," and have attempted "maliciously to hurt innocent people." These allegations, which do not identify public capacity conduct committed by the Respondent, cannot form a legally sufficient basis for finding a violation, as previously described.

WHEREFORE, staff of the Commission on Ethics shall conduct a preliminary investigation of this complaint for a probable cause determination of whether the Respondent has violated Section 112.3145, Florida Statutes, as set forth in paragraphs 3 and 4, above.

December 14, 2021
Date
Kenie J. Stillman
Kenie J. Stillman
Executive Director

KJS/gps