

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: R.C. "RICK" LUSSY,

Case No. 21-3687EC

Respondent.

RECOMMENDED ORDER

The final hearing in this matter was conducted before Administrative Law Judge Brian A. Newman of the Division of Administrative Hearings ("DOAH"), pursuant to sections 120.569 and 120.57(1), Florida Statutes (2021), on February 3, 2022, in Fort Myers, Florida.

APPEARANCES

For Advocate: Elizabeth A. Miller, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

For Respondent: Richard Charles Lussy, pro se
Richard Lussy & Associates
860 Sixth Avenue South
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STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Respondent violated Article II, Section 8, Florida Constitution ("Article II, Section 8"), and section 112.3144, Florida Statutes, by filing an inaccurate CE Form 6: Full and Public Disclosure of Financial Interests ("Form 6") in 2020; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On March 10, 2021, the Florida Commission on Ethics (“Commission”) filed an Order Finding Probable Cause (“Order”) to believe that Respondent, as a candidate for Collier County Property Appraiser in 2020, violated Article II, Section 8 and section 112.3144 by failing to list two liabilities exceeding \$1,000 on the Form 6 he submitted for 2019 (hereafter the “2019 Form 6”). On December 8, 2021, the Commission requested a public hearing on the matter at DOAH.

Respondent filed repeated motions challenging the validity of the order and judgment that are the liabilities omitted from his 2019 Form 6. These motions were denied because DOAH lacks jurisdiction to order such relief.

The final hearing was held on February 3, 2022, in Fort Myers, Florida. Respondent appeared in person for the final hearing and the Advocate appeared by Zoom video conference.

During the final hearing, the Advocate presented testimony from Respondent who also testified on his own behalf. Advocate’s Exhibits 2, 3, and 5 through 7 were admitted. Respondent’s Exhibits 1 through 6 were admitted.

After the final hearing both parties filed Proposed Recommended Orders, which were duly considered in the preparation of this Recommended Order. References to Florida Statutes are to the 2019 version unless otherwise indicated.

FINDINGS OF FACT

1. The Commission serves as the “guardian of standard of conduct for officers and employees of the state.” It is the “independent Commission provided for in Article II, Section 8(f), responsible for administering, maintaining records, reviewing complaints, and disciplining individuals who violate Article II, Section 8, and section 112.3144.” *See* §§ 112.320, 112.322, and 112.324, Fla. Stat.

2. Respondent was a candidate for the Collier County Property Appraiser in 2020 and was obligated to file a Form 6 for the year 2019. Respondent filed his 2019 Form 6 on April 20, 2020. The form's instructions, printed on page 4, state in pertinent part:

Part C-Liabilities [Required by Art. II, s. 8, Fla. Const.; s. 112.312]

List the name and address of each creditor to whom you owed more than \$1,000 on the date you chose for your net worth in Part A, and list the amount you owed. Liabilities include: accounts, notes, and interest payable; debts or obligations (excluding taxes, unless the taxes have been reduced to a judgment) to governmental entities; judgments against you.

3. Respondent did not list any liabilities in excess of \$1,000 on his 2019 Form 6. Respondent signed his 2019 Form 6 on April 20, 2020, affirming under oath that the information disclosed was "true, accurate, and complete."

4. On the date Respondent signed his 2019 Form 6, he had two outstanding liabilities that exceeded \$1,000. These liabilities existed in 2019 and in 2020 when he signed his 2019 Form 6.

5. The first liability exceeding \$1,000 is an assessment of attorney's fees entered against Respondent and in favor of Gaylord Wood, Jr., in the amount of \$10,862.50. This award was entered against Respondent in an Amended Final Order issued by the Commission in another case on November 28, 2017. Respondent attempted to appeal this Amended Final Order, but he was unsuccessful. Respondent testified that he intends to challenge the Amended Final Order again, but admitted that he had lost all of his attempts to appeal the Amended Final Order by the time he signed his 2019 Form 6. Respondent has not paid this debt.

6. The second liability exceeding \$1,000 is a Judgment Awarding Attorney's Fees to Defendant City of Naples, entered September 15, 2005, imposing \$12,333.00 of attorney's fees and costs against Respondent. Like the Amended Final Order, Respondent testified that he intends to challenge the validity of the Judgment

Awarding Attorney's Fees, but admits that his attempts to do so thus far have failed. Respondent has not paid this debt.

7. Respondent's 2019 Form 6 was incomplete and inaccurate because he omitted these two liabilities that exceeded \$1,000.

8. On January 31, 2022, four days before the final hearing (and thus well after the 2020 race for Collier County Property Appraiser was decided), Respondent served on the Advocate a Form 6x, entitled "Amendment to Full and Public Disclosure of Financial Interests." Respondent's Form 6x indicates that he submitted it to amend his 2019 Form 6. Respondent's Form 6x identifies the two previously undisclosed liabilities with qualifying language. On his Form 6x, Respondent identified the Amended Final Order assessing \$10,862.50 against him as "Elections Commission Erroneous Fraud, Breach of Loyalty Oath ORDER: Manipulated False Record Not End of Case." Respondent identified the Judgment Awarding Attorney's Fees in the amount of \$12,333.00 as "City of Naples Erroneous[sic], Fraud manipulated & false Judgment not adversarial 10-min. hearing. Not all fact rebuttal."

9. Respondent's net worth, as reflected on his Form 6x, is negative \$24,895. Respondent testified that his annual income is limited to social security benefits in the amount of \$16,530. Respondent's testimony as to his negative net worth and annual income is credible and is accepted.

CONCLUSIONS OF LAW

10. DOAH has jurisdiction over the parties and the subject matter of this proceeding. *See* § 120.57(1), Fla. Stat.

11. Section 112.322 and Florida Administrative Code Rule 34-5.0015 allows the Commission to conduct investigations and make public reports on complaints concerning violations of chapter 112, Part III, the Code of Ethics for Public Officers and Employees (Code of Ethics).

12. Respondent, by virtue of his position as a candidate for Collier County Property Appraiser in 2020, was subject to Article II, Section 8, and the

requirements of chapter 112, Part III. Rule 34-8.003(1) specifies that candidates for the office of Property Appraiser—among other constitutional offices—are required to file full public disclosures under Article II, Section 8.

13. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative. *Balino v. Dep't of HRS*, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, the Commission, through its Advocate, is asserting the affirmative. Proceedings that seek recommended penalties for violations of Article II, Section 8 and the Code of Ethics require proof of the alleged violation(s) by clear and convincing evidence. See *Latham v. Fla. Comm'n on Ethics*, 694 So. 2d 83 (Fla. 1st DCA 1997).

14. Clear and convincing evidence “requires more proof than a ‘preponderance of the evidence’ but less than ‘beyond and to the exclusion of a reasonable doubt.’” *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994)(quoting, with approval, *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). “Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous.” *Westinghouse Elec. Corp. v. Shuler Bros.*, 590 So. 2d 986, 988 (Fla. 1991).

15. Article II, Section 8, under which Respondent is charged, provides in pertinent part:

A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

* * *

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

16. Respondent violated Article II, Section 8 when he signed his 2019 Form 6 without listing two liabilities that exceeded \$1,000. These liabilities were, however, listed on Respondent's Form 6x that was submitted to the Advocate on January 31, 2022. Form 6 deficiencies may be cured with an amendment, but the amended form must be filed timely to cure a deficiency in the original filing.

17. As a candidate for Collier County Property Appraiser in 2020, Respondent's Form 6 was due on or before the date he qualified to run for that office. Fla. Admin. Code R. 34-8.002. Section 112.3144(11)(a) requires the Commission to accept an amendment to a Form 6 if the amended form is filed on or before September 1 of the year in which the disclosure was required. Thus, Respondent's deadline to amend his Form 6 was September 1, the year he qualified to run for office. Although Respondent's qualification date was not established here, his Form 6x was not filed until 2022—long after the race he ran in was decided—and was therefore untimely. Because Respondent's Form 6x was untimely, it was not considered part of his

original 2019 Form 6 filing and thus did not cure his failure to list two liabilities exceeding \$1,000.¹ § 112.3144(11)(a), Fla. Stat.

18. The Advocate proved by clear and convincing evidence that Respondent violated Article II, Section 8 when he filed his 2019 Form 6 without identifying two liabilities that exceeded \$1,000. Respondent's subsequent attempt to cure this deficiency by supplying his Form 6x on January 31, 2022, failed because it was untimely. In addition, the filing of the Form 6x is not considered a mitigating factor in this case because it was filed after the complaint that initiated this proceeding. § 112.3144(13), Fla. Stat.

19. The Advocate did not prove that Respondent also violated section 112.3144, because this statute does not impose any independent obligation on Respondent to list liabilities exceeding \$1,000 on his 2019 Form 6. Instead, section 112.3144 provides additional instruction for the requirement imposed by Article II, Section 8 to make a full and public disclosure of financial interests. For example, for the requirement imposed by Article II, Section 8 to disclose each liability exceeding \$1000, section 112.3144(6)(b) provided instructions for joint and several liabilities not at issue in this case.

20. Under section 112.317(1)(a), the penalties for the violation proven here include a public censure and reprimand and civil penalty not to exceed \$10,000. The Advocate recommends a public censure and reprimand and a civil penalty of \$500 in this case. The undersigned finds the Advocate's proposed penalties appropriate. Although low, the \$500 civil penalty is enough to deter any further violation given Respondent's negative net worth and modest annual income.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order and public report be entered finding that

¹ The Advocate also argues that Respondent's Form 6x is ineffective because it was not filed in the proper place, was not submitted electronically, and purports to amend a 2020 Form 6 instead of the 2019 Form 6 at issue here. It is unnecessary, however, to determine whether these are additional grounds to disregard Respondent's Form 6x because it was not filed timely and is ineffective for this reason alone.

Respondent violated Article II, Section 8, Florida Constitution, and imposing a public censure and reprimand, and a civil penalty of \$500.

DONE AND ENTERED this 23rd day of March, 2022, in Tallahassee, Leon County, Florida.



BRIAN A. NEWMAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of March, 2022.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.