

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

Complaint No. 15-145

In re: NATHAN MCLAUGHLIN, Respondent.

PETITION FOR COSTS AND ATTORNEY'S FEES

Respondent, NATHAN (“Nate”) MCLAUGHLIN, pursuant to Section 112.317(7), Florida Statutes, and Rule 34-5.0291, Florida Administrative Code, submits this Petition for Costs and Attorney’s Fees against Complainant, Dennis McDonald, with respect to the above referenced complaint and, in support thereof, states:

1. On or about June 30, 2015, Mr. McDonald filed a complaint with the Commission on Ethics against Nate McLaughlin, a copy of which is attached as Exhibit “A.” A Public Report and Order Dismissing the Complaint for failure to constitute a legally sufficient complaint was rendered on October 28, 2015. See, Exhibit “B.”

2. As evidenced herein, the complaint by Mr. McDonald was filed with a malicious intent to injure the reputation of Mr. McLaughlin, and it was filed with knowledge that it contained one or more false allegations, or with reckless disregard for whether it contained false statements of facts material to alleging a violation of the Code of Ethics.

Standard for Claim for Attorney’s Fees and Costs

3. Section 112.317(7), Florida Statutes, provides as follows:

In any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations

of fact material to a violation of this part, the complainant shall be liable for costs plus reasonable attorney fees incurred in the defense of the person complained against, including the costs and reasonable attorney fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

Construing the requirements of Section 112.317(7), Florida Statutes, the First District Court of Appeal concluded:

Based on the text of the statute, the elements of a claim by a public official for costs and attorney fees are that (1) the complaint was made with a malicious intent to injure the official's reputation; (2) the person filing the complaint knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth; and (3) the statements were material.

Brown v. State, Commission on Ethics, 969 So. 2d 553, 560 (Fla. 1st DCA 2007), *rev. denied*, *Burgess v. Brown*, 980 So. 2d 1070 (Fla. 2008).

Malicious Intent to Injure Reputation of Mr. McLaughlin

4. This is one of a series of 19 complaints filed by Mr. McDonald and others acting in concert with him, filed variously with this Commission, the Florida Elections Commission (FEC), The Florida Bar, the local circuit court, and the local State Attorney against public officials in Flagler County who are the targets of these complaints. There are similarities of structure, content, and intent among the complaints filed by the group that exhibit a concerted effort to cast local officials in a false light and besmirch their reputations.

5. Mr. McLaughlin has been the subject of four agency complaints filed by this group: Ethics Complaint 14-230 filed by Mark Richter, Jr.; FEC Complaint 14-464 filed by Mark Richter, Sr., who lost to Mr. McLaughlin in the 2014 Primary Election for county

commissioner; FEC Complaint 14-471 filed by Mark Richter, Jr.; and this complaint - Ethics Complaint 15-145 filed by Mr. McDonald. (Together, Mr. McDonald and Mr. Richter, Sr. ran as a ticket for the two open county commission seats, both losing in the August 2014 Primary Election.)

6. In his complaint, Mr. McDonald states the intention of the group filing the complaints was to force Mr. McLaughlin and the other local officials to pay for the legal defense of claims against them with their personal resources by naming them individually as respondents and having them served at their home addresses.

7. Mr. McDonald alleges Mr. McLaughlin misused his position as a county commissioner for personal gain by voting for findings in a public meeting of the Board on December 15, 2014 that the claims against him and other commissioners arose out of their public duties and that defending against them serves a public purpose. Despite this allegation, Mr. McDonald in the complaint quotes the County Attorney, Albert J. Hadeed, from the same public meeting advising that the findings are required by law. In addition, Mr. McDonald notes that the audio of the meeting is publicly available on the website of the Clerk of Court. That audio, as well as the official minutes of the Board accessible on the Clerk of Court's website and attached here as Exhibit "C", show that the County Attorney went to great length to explain the purpose of the required findings.

8. As outlined in the County Attorney's presentation to the Board at the December 15, 2014 meeting, the findings at the center of Mr. McDonald's complaint were the Board's responsibility to render if the complaints were to be submitted to the County's insurance provider for coverage, based on the Supreme Court decision of *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914, 917 (Fla. 1990) and as interpreted by the Attorney General in AGO's 94-11 and 91-58 and as further provided by the Legislature in Section

112.08(2)(a), Fla. Stat., which authorizes local governments, among other things, to procure legal expense insurance. Moreover, the County Attorney informed the County Commission that insurance coverage was only available for complaint allegations involving actions as county commissioners and not as candidates for office.

9. The Board also made similar findings required under the foregoing authorities at its meetings on July 6, 2015 and September 21, 2015, with the same instructions from the County Attorney, in response to subsequent complaints filed by the same group against the Commissioners and County Attorney, including Mr. McDonald's present complaint against Mr. McLaughlin. Mr. McDonald had no reason to believe that the findings were made in violation of the law, both before he filed his complaint as well as afterwards.

10. In an attempt to call into question Mr. McLaughlin's integrity, Mr. McDonald alleged that Mr. McLaughlin violated the confidentiality rules of the Ethics Commission by sharing his complaint with the County Attorney. However, the Commission's complaint form, of which Mr. McDonald availed himself in filing the complaint against Mr. McLaughlin and easily locatable on the Commission's website, clearly states the rules of confidentiality do not apply to a respondent. Further, providing the complaint to the County's chief attorney for consideration in the ordinary course of business could hardly be considered a breach of statutory confidentiality by any measure.

11. Mr. McDonald used the complaint as a vehicle to damage the reputation of Mr. McLaughlin as evidenced by the use of repetitive, hyperbolic language to describe Mr. McLaughlin and his actions as a commissioner: "misfeasance, malfeasance and incompetence," "misleading," "untrue," "willful, wanton knowledge," "secretive," "calculated, planned," "illegal and unethical" and "egregious."

12. As another indicator of an intention to malign Mr. McLaughlin, the complaint repeatedly emphasizes that Mr. McLaughlin has had ethics training and otherwise has access to resources to help him avoid ethics violations, and that nevertheless, every action of Mr. McLaughlin, from consulting an attorney, to settling the Elections Commission complaint with a consent payment, to voting in a public meeting, was done with intention to avoid paying for his legal defense or was otherwise unethical and a violation of law.

False Allegations Contained in the Complaint

13. In his complaint filed with the Commission, Mr. McDonald alleged, in essence, that Mr. McLaughlin used funds that were not his to pay the agreed upon civil penalty in connection with a consent order he entered into with the FEC to resolve a complaint filed against him with the FEC. Mr. McDonald was fully aware at the time he filed the complaint that the allegation was false, or he acted with reckless disregard for whether this allegation was true or false. Specifically, the Complaint alleged in pertinent part:

17. On May 20, 2015 the Florida Elections Commission held a hearing regarding the personal campaign violation matter identified in Florida Elections Commission Case Number 14-464 in which Nathan (Nate) McLaughlin; the respondent was accused of violating Florida Statue (sic) 106.143(1)(a) and the Consent Order F.O. No: FOFEC 15-141W. Payment in the amount of \$250, was accepted to satisfy the personal matter which related to his personal re-election campaign. This was in no way related to county business or his official capacity as a County Commissioner.

18. The \$250 Elections Commission fine referenced in the Consent Order, which was signed by Nathan (Nate) McLaughlin was paid for from a TRUST ACCOUNT check from Messer Capareello PA. It is believed to have been issued from the legal counsel or his firm's business. A law firm which the county Board of County Commissioners and their staff or insurance provider [PGCS Preferred Governmental Claim Solutions) hired or appointed to defend the personal complaint. The complaint that was in

no way associated with Nathan (Nate) McLaughlin's elected position as a County Commissioner.

19. **It is believed funds disbursed from the Trust Account were funds that were not provided personally by the "Respondent" Nathan (Nate) McLaughlin.** It is unknown where the funds distributed from the Trust Account came from, and if any co-mingling of monies occurred.

See, Complaint at ¶¶ 17-19 (emphasis added).

14. Included in the complaint was a copy of the consent order referenced in Paragraph 17 of the complaint, which specifically states that "[t]he civil penalty shall be paid by money order, cashier's check, or attorney trust account check." Thus, Mr. McDonald knew that there was nothing untoward about the payment being made through an "attorney's trust account" as alleged in Paragraph 18 of his complaint to this Commission.

15. In Paragraph 17 of the complaint, Mr. McDonald indicates that the complaint in FEC Case Number 14-464 accused Mr. McLaughlin of "violating Florida Statue (sic) 106.143(1)(a)." That section of Florida law addresses disclaimer requirements for political advertisements paid for by a candidate.¹ The Elections Commission consent order referenced in Paragraph 17 indicates that FEC Case Number 14-464 alleged that Mr. McLaughlin violated Section 106.143(1)(a), Florida Statutes, that the Elections Commission deemed it a minor violation and that Mr. McLaughlin was to pay a civil penalty of \$250. See, Exhibit "B" at pp. 2 & 3, ¶¶ 8 & 17.

¹ Section 106.143(1)(a), Florida Statutes, provides as follows:

106.143 Political advertisements circulated prior to election; requirements.—

(1)(a) Any political advertisement that is paid for by a candidate, except a write-in candidate, and that is published, displayed, or circulated before, or on the day of, any election must prominently state:

1. "Political advertisement paid for and approved by (name of candidate), (party affiliation), for (office sought)"; or
2. "Paid by (name of candidate), (party affiliation), for (office sought)."

16. In the past ten months, Mr. McDonald and his cohorts have made numerous public records requests of Flagler County regarding claims filed with the County's insurance provider, Preferred Governmental Claim Solutions (PGCS) (and for other matters related to their various claims).

17. On June 5, 2015, pursuant to one such request, the County's public information officer furnished Mr. McDonald documents from PGCS' claims administrator, including a letter attached here as Exhibit "D", which identifies Mr. McLaughlin as the respondent of the complaint filed by Mr. Richter with the FEC. The letter addressed to Mr. McLaughlin summarizes the nature of the allegations in the FEC complaint and concludes:

"Because the wrongful acts alleged by Mr. Richter were not performed in the performance of your duties as a Commissioner for the Flagler County BOCC but rather in your individual capacity as a candidate running for election, there is no coverage for this claim under the Coverage Agreement.

....

Preferred will therefore not be providing a defense or indemnification in this matter."

See, Exhibit "D" at pages 4-5 (and other relevant matter also highlighted).

18. Moreover, Mr. McDonald also received pursuant to the same request another letter from PGCS' claims administrator relative to the complaint filed by Mr. Richter's son, FEC Case Number 14-471, which alleged separate campaign law violations. Likewise, the insurer came to the same conclusions that candidate related matters were not subject to coverage and used the same wording to deny coverage. *See*, Exhibit "E" at pages 4-5 (and other relevant matter also highlighted).

19. Thus, there is no mistaking that Mr. McDonald was aware that the funds disbursed through Mr. McLaughlin's law firm's trust account were not provided by

Flagler's County's insurer when Mr. McDonald filed his complaint with this Commission. Coverage had been denied quite clearly in formal correspondence to Mr. McLaughlin.

20. Mr. McLaughlin deposited his personal funds into his law firm's trust account, which were used in turn to pay the aforementioned civil penalty. In filing his complaint, Mr. McDonald ignored the records he had already received and made no additional effort to determine the source of the funds used by Mr. McLaughlin to pay the agreed upon civil penalty. Instead, he stated under oath: **"It is believed funds disbursed from the Trust Account were funds that were not provided personally by the "Respondent" Nathan (Nate) McLaughlin."**

21. The above-referenced allegations among others were material to the alleged violations of the Code of Ethics and the need of Mr. McLaughlin to seek legal counsel with respect to the complaint filed against him by Mr. McDonald.

Claim for Attorney Fees

22. As noted in the Public Report and Order Dismissing Complaint, it is not inconsistent with the proper performance of public duty for a board of county commissioners to further a publicly provided defense for themselves in matters arguably connected to their public purpose. "Indeed, such conduct would seem to be prudent and to serve a public purpose regardless of whether a benefit also might accrue to the board members. *Blackburn v. Commission on Ethics*, 589 So. 2d 431 (Fla. 1st DCA 1991)." See, Exhibit "B," ¶5.

23. Consistent with defending Mr. McDonald's complaint alleging a violation of the Code of Ethics, Mr. McLaughlin brought the instant complaint to the attention of the Flagler County Attorney, who sought the assistance of undersigned counsel in connection

with this complaint on behalf of Mr. McLaughlin.² The Flagler County Attorney also notified the County's insurer of a potential claim.

24. The Flagler County Board of County Commissioners at its November 2, 2015 public meeting, reviewed Mr. McDonald's complaint, the Commission's Order, along with the provisions of Section 112.317(7), Florida Statutes, and determined the circumstances met the requirements of the statute to seek recovery of attorney's fees and costs.

25. Through the date of filing this petition, the amount of attorney's fees and costs expended or incurred on behalf of Mr. McLaughlin in the defense of this complaint to date are \$630.00. Attorney's fees have been paid by Flagler County's insurer at an hourly rate of \$180.00, which is substantially below undersigned counsel's standard hourly rate for ethics representation. In addition, the Flagler County attorney's office has devoted attorney and paralegal time in assisting in defense of this complaint for which it should be reimbursed.³

² Undersigned counsel had been previously retained on behalf of Mr. McLaughlin as well as other Flagler County officials in connection with a series of complaints by Mr. McDonald and others.

³ See *Couch v. Commission on Ethics*, 617 So. 2d 1119, 1126-1127 (Fla. 5th DCA 1993):

Section 112.317(8) does provide for an award of attorney's fees against a complainant when the respondent was represented by counsel of her public agency, as was [Chapin] and is not limited to situations in which a respondent contracts personally and directly with a private attorney for representation or pays fees from her own pocket.

The Legislature intended, in enacting Chapter 75-208, Laws of Florida, which is codified at Section 112.317(8), Florida Statutes (the costs and attorney's fee provision at issue here), to punish persons who make malicious and baseless ethics complaints, such as that found by the Hearing Officer and this Commission to have been made by Mr. Couch against Ms. Chapin, and thereby intended to deter similar conduct. The Hearing Officer adheres unduly to what he considers to be the strict language of the provision and focuses on the phrase "incurred by the person complained against" in coming to his conclusion and recommendation that costs and attorney's fees should not be awarded.

The Commission further concluded that (cont'd)

26. To the extent Mr. McLaughlin recovers fees and costs in this proceeding, it is his intent that the County's insurer and Flagler County be reimbursed for the fees paid or incurred in the defense of this complaint and that undersigned counsel be paid a reasonable fee in connection with his representation in this matter.

Conclusion

27. Because the complaint was filed with malicious intent to injure the reputation of Mr. McLaughlin, Respondent in Complaint 15-145, and because it was filed with knowledge that it contained one or more false allegations or with reckless disregard for whether it contained false allegations of fact material to a violation of the Code of Ethics, Mr. McLaughlin is entitled to an award of costs and attorney's fees pursuant to Section 112.317(7), Florida Statutes, and Rule 34-5.0291, Florida Administrative Code.

WHEREFORE, Nathan McLaughlin requests:

A. That the Commission determine that the facts and grounds contained herein are sufficient to state a claim for costs and attorney's fees; and

B. That the Commission refer the petition to the Division of Administrative Hearings to conduct a formal hearing and to prepare a recommended order regarding Mr. McLaughlin's entitlement to an award of costs and attorney's fees and the amount of such

the meaning of the term "incur" encompasses situations such as that of the Respondent, Ms. Chapin, and is not limited to situations where a Respondent directly pays fees from his or her own pocket to an attorney.

The Commission, as created by Article II, Section 8 of the Florida Constitution, is the proper agency to interpret the ethics statutes of Chapter 112, and its interpretations will be accorded judicial deference by this court, so long as they are consistent with legislative intent and supported by competent, substantial evidence. *Public Employees Relations Comm'n v. Dade County Police Benevolent Ass'n*, 467 So.2d 987 (Fla. 1985). The Commission properly allowed recovery of attorney's fees by Chapin, represented by county attorneys, for the hours expended in obtaining dismissal of Couch's complaint, because the award effectuates the legislative intent of section 112.317(8) to penalize frivolous and malicious Commission complaints.

costs and fees consistent with the requirements of Section 112.317(7), Florida Statutes, and Rule 34-5.0291, Florida Administrative Code.

Respectfully submitted this 16th day of November, 2015, by:

/s/ Mark Herron
Mark Herron
Email: mherron@lawfla.com
Florida Bar No. 0199737
MESSER CAPARELLO, P.A.
Post Office Box 15579
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Telephone: (850) 222-0720
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Attorney for Respondent

Linda McKee Robison

Chair

Stanley M. Weston

Vice Chair

Michelle Anchors

Matthew F. Carlucci

Michael Cox

I. Martin Ford

Tom Freeman

Wiley Horton

Susan Horovitz Maurer



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"A Public Office is a Public Trust"

July 2, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Nathan McLaughlin
121 Pine Lakes Parkway; Apt. #209
Palm Coast, Florida 32137

Confidential

RE: Complaint No. 15-145, In re NATHAN MCLAUGHLIN

Dear Mr. McLaughlin:

The above-captioned complaint, recently received in the office of the Commission on Ethics, is being transmitted to you pursuant to the requirements of Section 112.324, Florida Statutes. This office will forward all future correspondence in this matter to you at the above-listed mailing address unless otherwise notified of a change in your address. This transmittal is a routine administrative requirement which should not be construed as an approval, disapproval, or judgment of the complaint, either as to its terminology or merits.

Please note that this complaint, as well as all of the Commission's proceedings and records relating to the complaint, remain confidential either until you make a written request to the Commission that such records be made public or until the complaint reaches a stage in the Commission's proceedings where it becomes public. Unless we receive a written waiver of confidentiality from you, our office is not free to release any documents or to comment on this complaint to members of the public or the press, so long as the complaint remains in a confidential stage. The Commission's procedures on confidentiality do not govern the actions of the complainant or the respondent.

The following information is submitted to aid you in understanding the review that a complaint may go through under the Commission's rules. The first stage in our complaint process is a determination of whether the allegations of the complaint are legally sufficient, that is, whether they indicate a possible violation of any law over which the Commission has jurisdiction. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation and all records relating to the complaint will become public at that time.

EXHIBIT A

Nathan McLaughlin

Page 2

July 2, 2015

If the complaint is legally sufficient but pertains solely to allegations of errors or omissions in financial disclosure forms, a determination will be made as to whether the error(s) or omissions(s) are significant to investigate. If the error(s) or omissions(s) are determined to be minor or inconsequential, you will be so notified and will be given 30 days in which to correct the error(s) or omission(s). If the correction is made, the complaint will be dismissed. If no correction is made, the complaint will advance to the next step in the process.

If the complaint is found to be legally sufficient, a preliminary investigation will be undertaken by the investigative staff of the Commission. The next stage of the Commission's proceedings involves the preliminary investigation of the complaint and a decision by the Commission of whether there is probable cause to believe that there has been a violation of any of the ethics laws. If the complaint is investigated, you and the complainant will be given an opportunity to speak with the investigator. You also will be sent a copy of our investigative report prior to any action by the Commission and will be given the opportunity to respond to the report in writing. If the Commission finds that there is no probable cause to believe that there has been a violation of the ethics laws, the complaint will be dismissed and will become public at that time.

If the Commission finds that there is probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and enters the last stage of proceedings, which requires that the Commission decide whether the law actually was violated and, if so, whether a penalty should be recommended. At this stage, you have the right to request a public hearing (trial) at which evidence would be presented, or the Commission may order that such a hearing be held. Public hearings usually are held in or near the area where the alleged violation occurred.

You are entitled to be represented by legal counsel during our proceedings. Upon written request, documents and notices regarding the complaint will be provided to your attorney.

If you are unfamiliar with the ethics laws and the Commission's responsibilities, I encourage you to access our website at www.ethics.state.fl.us, where you will find publications, rules, and other information. If there are any questions concerning this complaint or the procedures being followed by the Commission, please feel free to contact Ms. Millie Fulford, our Complaint Coordinator, at (850) 488-7864.

Sincerely,



Virindia Doss
Executive Director

Enclosure

cc: Dennis McDonald, Complainant

ORIGINAL

STATE OF FLORIDA
COMMISSION ON ETHICS
P. O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709

FLORIDA
COMMISSION ON ETHICS

JUN 30 2015
RECEIVED

COMPLAINT

15-145

1. PERSON BRINGING COMPLAINT:

Name: DENNIS McDONALD Telephone Number: 386 852 9016

Address: P.O. 1232

City: FLAGLER BEACH County: FLAGLER Zip Code: 32136

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

Current or former public officer, public employee, candidate, or lobbyist - please use one complaint form for each person you wish to complain against:

Name: NATHAN MCLAUGHLIN Telephone Number:

Address: 121 PINE LAKES PARKWAY APARTMENT #209

City: PALM COAST County: FLAGLER Zip Code:

Title of office or position held or sought: FLAGLER COUNTY COMMISSIONER

3. STATEMENT OF FACTS:

Please explain your complaint fully, either on the reverse side of this form or on additional sheets, providing a detailed description of the facts and the actions of the person named above. Include relevant dates and the names and addresses of persons whom you believe may be witnesses. If you believe that a particular provision of Article II, Section 8, Florida Constitution (the Sunshine Amendment) or of Part III, Chapter 112, Florida Statutes (the Code of Ethics for Public Officers and Employees) has been violated, please state the specific section(s). Please do not attach copies of lengthy documents; if they are relevant, your description of them will suffice. Also, please do not submit video tapes or audio tapes.

4. OATH

STATE OF FLORIDA
COUNTY OF FLAGLER

I, the person bringing this complaint, do
depose on oath or affirmation and say that
the facts set forth in the foregoing complaint
and attachments thereto are true and correct
to the best of my knowledge and belief.

Sworn to (or affirmed) and subscribed before me
this 26th day of JUNE
20 2015, by DENNIS McDONALD
(name of person making statement)

Carole Ruffalo



CAROLE RUFFALO
MY COMMISSION # EE135763
EXPIRES October 04, 2015

Florida Notary Public Seal, or Stamp Commissioned Name of Notary Public)

Dennis McDonald
SIGNATURE OF COMPLAINANT

Personally Known OR Produced Identification
Type of Identification Produced:

Jurisdiction of the Commission: The Commission on Ethics has the authority to review and investigate complaints concerning possible breaches of the public trust (violations of the State's ethics laws) by public officers, public employees, and similar persons involved with state and local government in Florida, including Executive Branch lobbyists. Complaints about the actions of Judges should be brought to the Judicial Qualifications Commission, and complaints against attorneys in private practice should be made to The Florida Bar.

Procedures followed by the Commission: The Commission follows a three-stage process when it considers complaints.

The first stage is a determination of whether the allegations of the complaint are legally sufficient, that is, whether the complaint indicates a possible violation of any law over which the Commission has jurisdiction. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation and all records relating to the complaint will become public at that time.

If the complaint is found to be legally sufficient, the investigative staff of the Commission will begin an investigation. The second stage of the Commission's proceedings involves this investigation of the complaint and a decision by the Commission of whether there is probable cause to believe that there has been a violation of any of the ethics laws. If the Commission finds that there is no probable cause to believe that there has been a violation of the ethics laws, the complaint will be dismissed and will become public at that time.

If the Commission finds that there is probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and enters the third stage of proceedings. The third stage requires that the Commission decide whether the law actually was violated and, if so, what penalty should be recommended. This stage requires a public hearing (trial) at which evidence would be presented.

Attorney's Fees: If the complaint is dismissed, the person against whom the complaint is filed can file a petition to have the complainant pay his or her attorney's fees, which will be awarded after a hearing if the Commission finds that the complaint was made with a malicious intent to injure the official's reputation, the complainant knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth, and the statements were material.

Confidentiality: The Commission cannot accept anonymous complaints and cannot keep the identity of the complainant or any witness confidential. A complaint, as well as all of the Commission's proceedings and records relating to the complaint, is confidential and exempt from the public records law either until the person against whom the complaint is made waives confidentiality, or until the complaint reaches a stage in the Commission's proceedings where it becomes public. The Commission's procedures on confidentiality do not govern the actions of the complainant or the person against whom the complaint is made.

Legal Counsel: Both the complainant and the person complained against can be represented by legal counsel during the Commission's proceedings.

Other Information: More information about the ethics laws and the Commission's responsibilities is available at the Commission's website, www.ethics.state.fl.us, which contains publications, rules, and other information.

Florida Ethics Commission Complaint filed against Nathan (Nate) McLaughlin

By Dennis McDonald

June 25, 2015

1. Per Florida Statute 112.320, the purpose of the Commission on Ethics is to serve as guardian of the standards of conduct for the offices and employees of the state, and of a county, city, or other political subdivision of the state, and are to serve as the independent commission provided for in s 8(f), Art. II of the State Constitution.
2. Nathan (Nate) McLaughlin was elected as county commissioner in 2010 and re-elected in 2012.
3. Nathan (Nate) McLaughlin has been fined previously as an elected official for an ethics violation and now again, case #14-464 in 2015 by the Florida Elections Commission for violation of election law, Florida Statute 106.143(1)(a).
4. As a Candidate Nathan (Nate) McLaughlin is required to be provided, read, and understand Chapter 106 of the Florida Statutes and file Form DS-DE84 (Statement of Candidate) confirming he has been provided, read and understood Chapter 106 of the Florida Statutes. The required filing is retained in the office of the supervisor of elections as part of the candidates qualifying documents.
5. On December 15, 2014 the County Attorney, Al Hadeed presented to the Board of County Commissioners at a public Board of County Commission meeting. This presentation was done after complaints were filed against not only Al Hadeed, but a number of county commissioners as candidates (including Nathan (Nate) McLaughlin). The following statements are made by county attorney Hadeed at the BOCC meeting 12/15/2014. Refer to: [available in audio by the Flagler County Clerk of Court as well as in text format on Flaglerlive.com **(IN UNUSUAL VOTE, FLAGLER COMMISSION ACKNOWLEDGES ETHICS AND ELECTION COMPLAINTS AGAINST ALL ITS MEMBER)**]

Attorney Al Hadeed stated that approval is needed to defend the complaints which could be done by approving three findings which he then outlined. **Attorney Hadeed advised the "findings on their part were required by law" and he recommended that the commission vote approval of the three finding which were never discussed by the board [in public] or questioned by the board before taking action to approve. These actions are believed to have been misleading, untrue, and clearly an example of using their elected position for their own personal gain. It is believed to be a misuse of public office, misfeasance and malfeasance.**

Attorney Hadeed also stated to the county commission immediately before the two votes on the matter contained in the December 15, 2014 minutes, that the filing might as well have named the Board of County Commissioners as the respondent. **The fact is the complaints did not; they were filed independently on individual Candidates who were incumbent county commissioners and for a variety of reasons.**

Attorney Hadeed then stated **"I need to report to YOU on the filings of the ethics and elections commission, and specifically fact-finding that we have to make in order to respond officially to those filings"**. This certainly appears to be a violation of the confidentiality requirement of the investigating commission.

Attorney Hadeed further stated **"the findings essentially are necessary in order to represent your interests as the Board of County Commissioners"**. (I believe that by attorney Hadeed making this statement he is informing the Board of County Commissioners when they vote on what he presents, they are voting to receive representation.) In fact there were no complaints filed against the "Board of County Commissioners". Commissioner Nate McLaughlin never questioned this position even though he had past experience to the contrary. Attorney Hadeed never presented any evidence to verify his statement.

Attorney Hadeed also put the burden on the commissioners individually before they took action on the three findings by stating "YOU would need to know these things in YOUR mind, It is YOUR judgment, YOUR discretion, that YOU'RE exercising in making these findings, and it is left SOLELY to YOU to make those determinations". Therefore when Nathan (Nate) McLaughlin voted on the approval of the three findings he did it with willful, wanton knowledge and must accept responsibility for his actions.

6. Nathan (Nate) McLaughlin voted on a matter that was presented by County Attorney Hadeed which was NOT listed on the meeting agenda, added to the agenda or advertised to the public. County attorney, Al Hadeed brought up this topic of voting approval for the commission to take action on the filed ethics and election complaints at the very end of the 12/15/2014 county commission meeting under Agenda Item # 21 "County Attorney Reports/Comments" which is a common mode of his secretive job performance. It is believed attorney Hadeed acts as a conduit for county commissioners to share consensus.
7. It appears from information publicly available that the County Attorney Hadeed and Commissioners were the respondents to separate complaints as individuals filed at their personal residential addresses. They then shared their confidential complaints with county

attorney Al Hadeed in an attempt to receive representation to defend the election and ethics filings. Therefore it is believed the action taken on or about December 15, 2015 at the urging of county attorney Hadeed was calculated, planned and expected.

8. By Nathan (Nate) McLaughlin voting to approve the "three findings" as county attorney Al Hadeed presented it is believed to have been done to carry out an agenda for personal gain and for the gain of co-commissioners and the county attorney (his employee). It is believed whole heartedly that this agenda was for the Taxpayers of Flagler County to be responsible for the county attorney and county commissioners own legal fees to defend the claims that were filed against them as individuals.
9. Nathan (Nate) McLaughlin was present during the December 15, 2014 Board of County Commission meeting and willfully and knowingly voted on the matter recommended by the county attorney which may have resulted in the county covering legal fees through it's insurance provider such as PGCS (Preferred Governmental Claim Solutions). It was done so with willful, wanton knowledge. Nathan (Nate) McLaughlin is believed to have violated the public's trust, used his elected position for his own personal gain and the gain of his associates (co-commissioners) and employee Al Hadeed. He therefore is believed to have demonstrated misfeasance, malfeasance, misuse of his official position and violated the public's trust.
10. It was known by the Respondent (Nathan (Nate) McLaughlin) that a complaint had been filed against him and he was made aware of the nature of the complaint before he voted in support of the county attorney Al Hadeed's recommendation regarding legal representation as this had been reported by the local media and Nathan (Nate) McLaughlin had been notified by the Florida Elections Commission.
14. Nathan (Nate) McLaughlin was well aware that the county or it's insurance provider did not pay for his previous Commission on Ethics violation representation and/or penalty. Nathan McLaughlin should have known as an incumbent commissioner it was not proper or appropriate that the county or it's insurance provider pay to defend complaints filed in 2014 against individuals personally as candidates for BOCC.
15. Nathan (Nate) McLaughlin was well aware that the county or it s insurance provider did not pay to defend other complaints filed against other County Commissioners, the Sheriff or the Supervisor of Elections since he has been an officer holder. Therefore he had knowledge this was not normal or acceptable for the county or it s insurance provider to pay to defend any such complaints.
16. The county attorney and manager demonstrated willful, wanton behavior by knowingly and

willingly filing a claim with the county insurance provider to defend these complaints. One of these was being filed against Nathan (Nate) McLaughlin for his personal re-election campaign violation. In doing so, this would allow Nathan (Nate) McLaughlin to receive personal gain as an elected official. Insurance claims were filed after a vote was taken by the Board of County Commissioners approving "three findings on their part". These findings were never discussed in public or questioned by the board of county commissioners. This vote of action may have directly caused the Taxpayers of Flagler County to be responsible for legal costs to defend actions by candidates for re-election.

17. On May 20, 2015 the Florida Elections Commission held a hearing regarding the personal campaign violation matter identified in Florida Elections Commission Case Number 14-464 in which Nathan (Nate) McLaughlin; the respondent was accused of violating Florida Statue 106.143(1)(a) and the Consent Order F.O. No: FOEC 15-141W. Payment in the amount of \$250, was accepted to satisfy the personal matter which related to his personal re-election campaign. This was in no way related to county business or his official capacity as a County Commissioner.
18. The \$250 Elections Commission fine referenced in the Consent Order, which was signed by Nathan (Nate) McLaughlin was paid for from a TRUST ACCOUNT check from Messer Caparello, PA. It is believed to have been issued from the legal counsel or his firm's business. A law firm which the county Board of County Commissioners and their staff or insurance provider [PGCS Preferred Governmental Claim Solutions) hired or appointed to defend the personal complaint. The complaint that was in no way associated with Nathan (Nate) McLaughlin's official elected position as a County Commissioner.
19. It is believed funds disbursed from the Trust Account were funds that were not provided personally by the "Respondent" Nathan (Nate) McLaughlin. It is unknown where the funds distributed from the Trust Account came from, and if any co-mingling of monies occurred.
20. The Florida Elections Commission Consent Order in case FEC 14-464 states that the "Respondent" (Nathan (Nate) McLaughlin) is responsible for his own legal fees.
21. It is believed per Florida Statute 112.3142 Nathan (Nate) McLaughlin is required to take annual ethics training.
22. Nathan (Nate) McLaughlin also has the authority and responsibility to request information and policy from the Ethics Commission prior to any vote that may impact his ability to be ethical and properly binding.

23. Nathan (Nate) McLaughlin has the responsibility and authority as a county commissioner to bring matters before the commission that are believed or known to be unethical, inappropriate or illegal. In all respects this appears to be illegal and unethical for the taxpayers/Board of County Commissioners or the county insurance company to pay for personal legal expenses. It is believed he willfully and knowingly demonstrated misfeasance, malfeasance and incompetence.
24. Nathan (Nate) McLaughlin also has access to the Florida Ethics Commission as a county commissioner for any reference to be used prior to voting at public Board of County Commission meeting.
25. Nathan (Nate) McLaughlin is required to file a Form 6 (Full Public Disclosure of Financial Interests) with the Ethics Commission annually. Within the instructions provided is information as to when one must file a FORM 8B (Memorandum Of Voting Conflict For County, Municipal, And other Local Public Officers).
26. Included in the instructions of the FORM 8B it clearly states that "A person holding an elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which would inure to his or her special private gain or loss". It is also stated "ELECTED OFFICERS: In addition to abstaining from voting in the situations described above, you must disclose the conflict: PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; and WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes".
27. Nathan (Nate) McLaughlin did NOT ABSTAIN from voting on a matter brought forth by his employee, county attorney Al Hadeed which would insure his special private gain. It is believed the action to approve the "three findings on their part" was necessary in order for legal representation to be provided at no cost to the respondents, and be coordinated by the county or their insurance provider so the respondents receive representation to defend complaints filed against them, including Nathan (Nate) McLaughlin.
28. Nathan (Nate) McLaughlin did NOT disclose the conflict PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of his interest in the measure and the fact that the measure would provide him with personal gain.
30. Nathan (Nate) McLaughlin did NOT WITHIN 15 DAYS AFTER THE VOTE OCCURRED file the required 8B FORM with the person responsible for recording the minutes of the meeting, who should have incorporated the form in the minutes.

31. It is believed Nathan (Nate) McLaughlin must be held accountable for violation of the public's trust by demonstrating unethical behaviors and for violating the law. His actions are especially egregious based on the fact that he is an incumbent county commissioner with known prior Ethics and Election Commission confirmed violations against him.

32. It is believed Nathan (Nate) McLaughlin shall be removed from office for knowingly demonstrating willful, wanton conduct of what is believed to be misfeasance, malfeasance, abuse of his elected position for his own personal gain and for breaking the public's trust.



REVISED

Flagler County Board of County Commissioners Agenda

December 15, 2014 • 5:00 p.m.

1. **Pledge to the Flag and Moment of Silence**
2. **Additions, Deletions and Modifications to the Agenda**
3. **Announcements by the Chair**
4. **Recognitions, Proclamations and Presentations:**
 - a) **Recognitions:**
 - 1) **Paramedics Recognition**
 - 2) **Feed Flagler Recognitions**
 - b) **Proclamations: None**
 - c) **Presentation: FDOT Five Year Work Program**
5. **Community Outreach:** A thirty-minute time has been allocated at the beginning of the meeting for public comment. Each speaker will be allowed up to three minutes to address the Commission on any consent agenda item or other topics not on the agenda. Each speaker will have three (3) minutes. Any speaker who is unable to speak within this Community Outreach period will be allowed to speak during the Community Outreach portion at the end of the meeting.

CONSENT

6. **Constitutional Officers:**

Clerk:

- a) **Bills and Related Reports:** Request the Board approve the report(s) of funds withdrawn from County depositories by the Flagler County Clerk of the Circuit Court and the Revenue Collected Report presented in compliance with the provisions of Section 136.06, Florida Statute as listed below:
 - 1) Week Ending November 14, 2014
 - 2) Week Ending November 21, 2014
 - 3) Week Ending November 28, 2014
 - 4) Week Ending December 5, 2014
- b) **Approval of Board Meeting Minutes:** Request the Board approve the minutes from the following Meetings:
 - 1) December 1, 2014 Regular Meeting

7. **Financial Matters:**

Approve Fiscal Year 2014-15 Budget Transfer for the Building Department Fund (181): Request the Board approve budget transfer# 15-103.

8. **Work Authorization**

a) **Approval of Work Authorization No. 01-15 in the Amount of \$24,800.00 to HDR Engineering, Inc. for Semiannual Groundwater and Surface Water Monitoring and Reporting and Annual Stormwater Inspections at the Closed Old Kings Road C&D Disposal Facility:** Request the Board approve Work Authorization No. 01-15 in the amount of \$24,800.00 to HDR Engineering, Inc. for Semiannual Groundwater and Surface Water Monitoring and Reporting and Annual Stormwater Inspections at the Old Kings Road C&D Disposal Facility.

b) **Approval of Work Authorization No. 02-15 in the Amount of \$59,300.00 to HDR Engineering, Inc. for Semiannual Groundwater and Surface Water Monitoring and Reporting, Annual Stormwater Inspections and Facility Permit Renewal Application at the Closed Class I Old Kings Road Landfill:** Request the Board approve Work Authorization No. 01-15 in the amount of \$59,300.00 to HDR Engineering, Inc. for Semiannual Groundwater and Surface Water Monitoring and Reporting, Annual Stormwater Inspections and Facility Permit Renewal Application at the Closed Class I Old Kings Road Landfill.

9. **Approval of Local Agency Program (LAP) Supplemental Agreement No. 1 and the Authorizing Resolution between Flagler County and the Florida Department of Transportation (FDOT), to Provide Additional Funds in the Amount of \$220,610 for the Construction of the Bunnell Elementary Trails Project, FDOT Financial Project No. 428042-1-58-01:** Request the Board approve the Local Agency Program (LAP) Supplemental Agreement No. 1 and the Authorizing Resolution between Flagler County and the Florida Department of Transportation (FDOT) for Construction the Bunnell Elementary Trails project in the amount of \$220,610.

10. **Approval Adding the Executive Director for Economic Opportunity Position to the Florida Retirement System's "Senior Management Service Class":** Request the Board approve adding the Executive Director for Economic Opportunity position to the Florida Retirement System's Senior Management Service Class.

11. **Approval of Space/Use Agreement between Flagler County and Delta Engineering, Inc. for a County Facility Located at 150 Aviation Drive, Flagler County Airport:** Request the Board approve the Space/Use Agreement for the County facility located at 150 Aviation Drive, on the Flagler County Airport to Delta Engineering, Inc.

12. **Approval to Purchase Emergency 911 Communications Center Computers and Approve a Budget Transfer in the Amount of \$27,003:** Request the Board approve the purchase of replacement computers for the E 911 Communications Center, and approve Budget Transfer 15-104 for \$27,003 from General Fund Reserves for the purchase.

13. **Florida Agricultural Museum**

a) **Approval of Contractual Services Agreement with the Florida Department of Agriculture and Consumer Services for Implementation of Capital Improvements at the Florida Agricultural Museum:** Request the Board approve the attached Contractual Services Agreement with the Florida Department of Agriculture and Consumer Services.

- b) **Approval of Memorandum of Agreement with the Florida Agricultural Museum for Implementation of Capital Improvements:** Request the Board approve the attached Memorandum of Agreement with the Florida Agricultural Museum.
14. **Approval of a Transportation Regional Incentive Program (TRIP) and County Incentive Grant Program (CIGP) Agreement between the Florida Department of Transportation (FDOT) and Flagler County for Construction of the Old Kings Road Extension, Between Forest Grove Drive and Matanzas Woods Parkway, in the amount of \$6,289,496.00; FDOT Financial Management No. 415962-2-58-0:** Request the Board approve the FDOT Transportation Regional Incentive Program and County Incentive Grant Program Agreement and adopt the Authorizing Resolution.
15. **Reclassification of Communications Manager Position to Create Two Positions - Public Information Officer and a Public Relations and Marketing Specialist:** Request the Board approve the Reclassification of Communications Manager Position creating two Positions - Public Information Officer and a Public Relations and Marketing Specialist effective February 4, 2015.
16. **2014 Performance Evaluation for the County Administrator:** Request the Board approval of a 10% salary increase and authorize the Chairman to execute the contact addendum with an effective date of December 2015.
17. **Consideration of an Agreement for Radio Network and Infrastructure Maintenance, with Communications International, Inc. amending the current 5 year contract by replacing the remaining year of the current contract and adding up to four (4) additional years:** Request the Board's approval of the amended agreement with Communications International, Inc. for a period of up to five (5) years at a rate of \$225,050.00 per year by replacing the last year of the existing contract and adding four additional years.

PUBLIC HEARINGS

Public Hearings will be heard after 5:30 p.m.

18. **LEGISLATIVE – Postponement of the Second Reading and Adoption of an Ordinance Amending the Land Development Code to Provide Standards for Short-Term Vacation Rentals:** Request the Board set February 2, 2015 at 5:30 p.m. or soon thereafter for the second reading of the proposed ordinance.

GENERAL BUSINESS

*General Business Presentations Limited to 15 Minutes with Individual Speaker Comments
Limited to 3 Minutes Each Speaker per Adopted Commission Meeting Procedures*

19. **None**

ADDITIONAL REPORTS AND COMMENTS

20. **County Administrator Report/Comments**

21. **County Attorney Report/Comments**

22. Commission Action

23. Community Outreach

A thirty-minute time has been allocated at the end of the meeting for public comment. Each speaker will be allowed up to three minutes to address the Commission on items not on the agenda.

24. Commission Reports/Comments

25. Adjournment

Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.



12/30/14

Flagler County Board Of County Commissioners
Attn: Joe Mayer
1769 East Moody Boulevard
Building 2
Bunnell, FL 32110

RE: Client: Flagler County Board Of County Commissioners
Claimant: Mark Richter
DOL: 12/2/2014
Event #: EV2014267171 Claim #: 276023

Loss Description: Florida Elections Commission received the enclosed complaint alleging Nathan McLaughlin violated Florida's election laws

Dear Joe:

We are in receipt of the above captioned claim and have assigned the above claim number.

If you have any additional information or wish to discuss this further, please contact your adjuster Kathy Fidler at (800) 237-6617 Ext:4061 or via email at kfidler@pgcs-tpa.com.

Sincerely,

Ann Hurst
PGCS Claim Services

Cc: Kate Gross via email



December 22, 2014

Flagler County Board Of County Commissioners
Joe Mayer
1769 East Moody Boulevard
Building 2
Bunnell, FL 32110

RE: Client: Flagler County Board Of County Commissioners
Claimant: Mark Richter
DOL: 11/20/2014
Event #: EV2014266992 Claim #: 275832

Loss Description: Alleges materials which were distributed during the 2014 election had the improper language disclaimer per FI Statute.

Dear Joe Mayer:

The above captioned claim is now closed.

\$0.00 was paid in indemnity.
\$0.00 was paid for expenses.

If you have any questions or wish to discuss this further, please call the undersigned at (800) 237-6617 Ext:4061 or e-mail at kfidler@pgcs-tpa.com.

Sincerely,

Kathy Fidler
Senior Claim Specialist
PGCS Claim Services

cc: Kate Gross via email

KF/kb



12/18/14

Flagler County Board Of County Commissioners
Attn: Joe Mayer
1769 East Moody Boulevard
Building 2
Bunnell, FL 32110

RE: Client: Flagler County Board Of County Commissioners
Claimant: Kimberlee Weeks
DOL: 12/17/2014
Event #: EV2014267040 Claim #: 275884

Loss Description: Allegations of a violation of a commissioner.

Dear Joe:

We are in receipt of the above captioned claim and have assigned the above claim number.

If you have any additional information or wish to discuss this further, please contact your adjuster Kathy Fidler at (800) 237-6617 Ext:4061 or via email at kfidler@pgcs-tpa.com.

Sincerely,

Ann Hurst
PGCS Claim Services

Cc: Heather Finken via email



12/19/14

Flagler County Board Of County Commissioners
Attn: Joe Mayer
1769 East Moody Boulevard
Building 2
Bunnell, FL 32110

RE: Client: Flagler County Board Of County Commissioners
Claimant: Kimberlee Weeks
DOL: 12/16/2014
Event #: EV2014267065 Claim #: 275908

Loss Description: Allegations of Violation of the Sunshine Law

Dear Joe:

We are in receipt of the above captioned claim and have assigned the above claim number.

If you have any additional information or wish to discuss this further, please contact your adjuster Kathy Fidler at (800) 237-6617 Ext:4061 or via email at kfidler@pgcs-tpa.com.

Sincerely,

Ann Hurst
PGCS Claim Services

Cc: Kate Gross via email



12/30/14

Flagler County Board Of County Commissioners
Attn: Joe Mayer
1769 East Moody Boulevard
Building 2
Bunnell, FL 32110

RE: Client: Flagler County Board Of County Commissioners
Claimant: Flagler County Supervisor of Elections
DOL: 12/4/2014
Event #: EV2014267164 Claim #: 276017

Loss Description: Florida Elections Commission received the enclosed complaint alleging Charles Ericksen Jr violated Florida's election laws.

Dear Joe:

We are in receipt of the above captioned claim and have assigned the above claim number.

If you have any additional information or wish to discuss this further, please contact your adjuster Kathy Fidler at (800) 237-6617 Ext:4061 or via email at kfidler@pgcs-tpa.com.

Sincerely,

Ann Hurst
PGCS Claim Services

Cc: Kate Gross via email



12/30/14

Flagler County Board Of County Commissioners
Attn: Joe Mayer
1769 East Moody Boulevard
Building 2
Bunnell, FL 32110

RE: Client: Flagler County Board Of County Commissioners
Claimant: Mark Richter
DOL: 12/5/2014
Event #: EV2014267175 Claim #: 276028

Loss Description: the Florida Elections Commission received the enclosed complaint alleging Frank Meeker violated Florida's election laws

Dear Joe:

We are in receipt of the above captioned claim and have assigned the above claim number.

If you have any additional information or wish to discuss this further, please contact your adjuster Kathy Fidler at (800) 237-6617 Ext:4061 or via email at kfidler@pgcs-tpa.com.

Sincerely,

Ann Hurst
PGCS Claim Services

Cc: Kate Gross via email

Select Year: 2014 ▼ Go

The 2014 Florida Statutes

Title XPUBLIC OFFICERS, EMPLOYEES,
AND RECORDSChapter 112PUBLIC OFFICERS AND EMPLOYEES:
GENERAL PROVISIONSView Entire
Chapter

112.320 Commission on Ethics; purpose.—There is created a Commission on Ethics, the purpose of which is to serve as guardian of the standards of conduct for the officers and employees of the state, and of a county, city, or other political subdivision of the state, as defined in this part, and to serve as the independent commission provided for in s. 8(f), Art. II of the State Constitution.

History.—s. 2, ch. 74-176; s. 11, ch. 91-85.

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Select Year: 2014 ▼ Go

The 2014 Florida Statutes

Title X

PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

Chapter 112

PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS

View Entire Chapter

112.3143 Voting conflicts.—

(1) As used in this section:

(a) “Principal by whom retained” means an individual or entity, other than an agency as defined in s. [112.312\(2\)](#), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one’s client, employer, or the parent, subsidiary, or sibling organization of one’s client or employer.

(b) “Public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(c) “Relative” means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(d) “Special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

(2)(a) A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss. Any state public officer who abstains from voting in an official capacity upon any measure that the officer knows would inure to the officer’s special private gain or loss, or who votes in an official capacity on a measure that he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained other than an agency as defined in s. [112.312\(2\)](#); or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer, shall make every reasonable effort to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. If it is not possible for the state public officer to file a memorandum before the vote, the memorandum must be filed with the person responsible for recording the minutes of the meeting no

later than 15 days after the vote.

(b) A member of the Legislature may satisfy the disclosure requirements of this section by filing a disclosure form created pursuant to the rules of the member's respective house if the member discloses the information required by this subsection.

(3)(a) 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 corporate principal 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 inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer 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 corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(5) If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

(6) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

History.—s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2; s. 6, ch. 2013-36.

In Unusual Vote, Flagler Commission Acknowledges Ethics and Elections Complaints Against All Its Members

FlaglerLive



The tangle of elections and ethics complaints against every county commission member arose mostly from their service, one after the other, on the county canvassing board, or from their candidacy for office in elections supervised by the board. (© FlaglerLive)

Complaints filed at the Florida Ethics Commission and the Florida Elections Commission are usually confidential. Not in the case of a stash of complaints filed against every member of the Flagler County Commission and the county attorney—complaints filed by Flagler County Supervisor of Elections and ex-commission candidate Mark Richter.

Commissioners started getting the complaints by mail a week ago, and spoke of them then. By Monday evening, even Barbara Revels, who thought she'd been spared, had received hers, and County Attorney Al Hadeed had confirmed on Saturday receiving his. A court spokesperson said there were no records as of Monday of any complaints filed by Weeks against Melissa Moore-Stens, the county judge who chairs the Canvassing Board.

With the exception of an elections complaint against Commissioner Nate McLaughlin, which deals with an

allegedly improper disclaimer format on some campaign literature, all the complaints deal in one way or another with issues Weeks has raised before at Flagler County Canvassing Board meetings, which were typically made unusually contentious by those issues.

At a county commission meeting Monday evening, Hadeed, who also serves as the Canvassing Board's attorney, took the unusual step of speaking of the complaints openly and seeking a vote by the commission to officially affirm three points regarding the complaints and the commissioners' actions.

Click On:

- Even as Election Culminates, Supervisor Weeks Finds a New Target: Commission Chairman George Hanns
- Miscounts Stretch Marathon Canvassing Board Meeting to 16 Hours, Ending After Midnight
- Elections Supervisor Weeks Suspends Canvassing Business for Radio Gig, Stunning Fellow Board Members
- Canvassing Board Rejects Weeks Attempt to Remove Hadeed as Attorney in Latest Clashes
- FDLE Serves Search Warrant as Supervisor of Elections Weeks Is Now Formally Under Investigation
- Commission Chairman Questions Election's Integrity in Broad Criticism of Supervisor Kim Weeks' Methods
- Weeks Scuttles Latest Attempt to Resolve Elections Conflicts in Heated Meeting
- Unbowed, Elections Supervisor Kimberle Weeks Signals More Brawling Ahead
- Palm Coast Manager Jim Landon Handed Wrong Ballot in Early Voting, Raising Questions About Election's Integrity
- "Derelict" Sheriff! Call In a Judge! Accuse Palm Coast of Larceny! Elections Supervisor Weeks Goes Unhinged.
- The Phony War Over Campaign Signs
- When a County Commissioner Calls The Supervisor of Elections A "Bitch"
- Kimberle Weeks Calls County's Campaign Sign Rules "Interference"; Administrator Craig Coffey Responds
- County Forcefully Rejects Elections Supervisor's Claims That Campaign Sign Restrictions Hurt Turnout
- State Election Supervisors' Attorney Told Kim Weeks a Month Ago That Palm Coast Was on Firm Ground
- What's Eating Kimberle Weeks?
- Kimberle Weeks Archives

"I am not speaking here of actions taken as candidates, but rather, actions you have taken as members of the county commission," Hadeed told commissioners. "Cumulatively, these filings are an across-the-board challenge on how the board of county commissioners discharged its responsibilities under the election laws. They challenge you as county commissioners acting in your official capacities in performing your public duties,

and the same with me in my official capacities as your county attorney and the Canvassing Board attorney. Indeed, these filings might as well have named the Board of County Commissioners as the respondent.”

Hadeed wanted the commission to vote approval of three findings on their part, which he said was required by law: First, that the allegations arise from carrying out their official duties. Second, that a public purpose was being served at the time of these actions. Third, that pending present and future complaints that may still be en route, “that our participation in them serves a public purpose to resolve elections-related questions that are being raised,” Hadeed said.

“On that score,” he continued, “we do look forward to having all the evidence presented, and maybe we can put the repetition of these allegations to final closure. Ultimately these are important issues to the effective operation and maintenance of the administration of our elections.”

The item had not been on the commission’s agenda. Hadeed brought it up during his portion of the meeting, and asked that the commission add the matter to the agenda so it could take action on it. While entirely legal and proper, it is that sort of actions that have prompted the commission’s—and Hadeed’s—detractors, among them Weeks, to claim that the commission has acted improperly on matters related to elections that may have been addressed in similar fashion.

While the county administration makes every effort to have as complete an agenda as possible before a meeting, issues do arise between the time an agenda is finalized and the time an issue is raised at the meeting. The complaints’ notices were just such an issue: when the agenda was finalized and posted on Friday, Revels, and possibly Hadeed, had yet to have taken possession of the complaints filed against them. By Monday, they had.

Revels made a motion to accept the three findings, and the commission unanimously approved the motion. Hadeed’s full statement appears below.

Following is the unedited, complete statement County Attorney Al Hadeed made to the county commission immediately before the two votes on the matter:

“I need to report to you on the filings of the ethics and elections commission, and specifically fact-finding that we have to make in order to respond officially to those filings. The findings essentially are necessary in order to represent your interests as the Board of County Commissioners. Overall the filings challenge your actions as commissioners and myself, as your county attorney and Canvassing Board attorney. These allegations have been presented before, and we have seen them play out at meetings and documents produced by the supervisor of elections. Now they’re before these agencies for review. We don’t know if there are other filings that are still en route. But the findings that you have to make by law extend to all of these filings that are related to your election process.”

“Now, I am not speaking here of actions taken as candidates, but rather, actions you have taken as members of the county commission. Cumulatively, these filings are an across-the-board challenge on how the board of county commissioners discharged its responsibilities under the election laws. They challenge you as county commissioners acting in your official capacities in performing your public duties, and the same with me in my official capacities as your county attorney and the Canvassing Board attorney. Indeed, these filings might as well have named the Board of County Commissioners as the respondent. Now, with that introduction, let me turn to the findings that are required by law. First, that the allegations arise from your carrying out of your official duties. Second, that a public purpose was being served at the time of these actions. You would know these things in your own minds. It is your judgment, your discretion, that you’re exercising in making these findings, and it is left solely to you to make those determinations. Likewise, you know of my actions. And again, these are

findings based on your knowledge.

"Additionally we have one more finding for you to consider, required by law. Specifically, that these present and future proceedings, accounting for those that are en route, that our participation in them serves a public purpose to resolve elections-related questions that are being raised. On that score, as you know, the county has stated to the area news outlets, we do look forward to having all the evidence presented, and maybe we can put the repetition of these allegations to final closure. Ultimately these are important issues to the effective operation and maintenance of the administration of our elections. Again, you would know through your knowledge about how important resolution of these issues would be to the effective operation of the county. Even though the filings and the proceedings of these agencies are confidential by law, I have to present proposed findings for your consideration at this point. Remember, they are proposed. You are the judge of them, based on your knowledge. Again, just to be clear, I am referring to the filings that address allegations about the administration of our elections, not as candidates, but as commissioners and myself as county attorney and Canvassing Board attorney. In order to officially proceed at this point with what I've just described, we're going to need a motion to add to the agenda, findings in connection with all filings related to actions taken in official capacities for the 2014 elections and prior elections as they may be raised in those filings."



Al Hadeed. (© FlaglerLive)



Supervisor of Elections Kimberle Weeks. (© FlaglerLive)

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, _____, hereby disclose that on _____, 20 ____ :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____ ;
- inured to the special gain or loss of my relative, _____ ;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

FILED

15 JUN -2 AM 12:49

STATE OF FLORIDA
ELECTIONS COMMISSION

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

In Re: Nathan McLaughlin
_____ /

Case No.: FEC 14-464

F.O. No.: FOPEC 15-141W

CONSENT ORDER

Respondent, **Nathan McLaughlin**, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all pending issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order.

FINDINGS OF FACT

1. Respondent was a 2014 candidate for re-election to the Flagler County Commission, District 4.
2. On December 1, 2014, the Commission received a sworn complaint alleging that Respondent violated the following section(s) of The Florida Election Code on one occasion:

Section 106.143(1)(a), Florida Statutes: As alleged in the complaint, Nathan McLaughlin, a 2014 candidate for re-election to the Flagler County Commission, District 4, distributed a political advertisement that contained express advocacy but did not include a proper disclaimer.
3. No other legally sufficient violation of Chapter 104 or 106, Florida Statutes, was alleged in the complaint.
4. Respondent against whom the complaint was filed has not been notified of an allegation of the same violation before the conduct about which the complaint was filed.
5. If the alleged violation occurred less than 14 days before the election in which the

Respondent is participating, the complainant did not allege that the political advertisement was either deceptive or influenced the outcome of the election.

6. Respondent used his name in the political advertisement.

CONCLUSIONS OF LAW

7. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

8. The Commission considers the allegation contained in the complaint a minor violation, pursuant to Rule 2B-1.003, Florida Administrative Code.

9. Respondent neither admits nor denies that he violated Section 106.143(1)(a), Florida Statutes, on one occasion.

ORDER

10. Respondent and the staff of the Commission have entered into this Consent Order voluntarily and upon advice of counsel.

11. Respondent shall bear his own attorney fees and costs that are in anyway associated with this case.

12. Respondent understands that before the Consent Order is final agency action, it must be approved by the Commission. The Commission will consider the Consent Order at its next available meeting.

13. Respondent voluntarily waives the right to any further proceedings under Chapters 106, and 120, Florida Statutes, and the right to appeal the Consent Order.

14. Respondent will carefully review Chapter 106, Florida Statutes, and avoid any future violation of the chapter.

15. Respondent agrees to correct immediately, if feasible, the violations alleged in

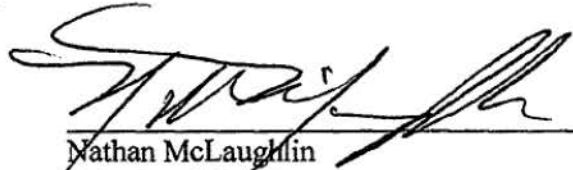
the complaint.

16. If the Commission does not receive the signed Consent Order and payment by the close of business on March 30, 2015, the staff withdraws this offer of settlement and will proceed with an investigation of the allegations in the complaint.

17. Respondent shall remit to the Commission a civil penalty in the amount of \$250. The civil penalty shall be paid by money order, cashier's check, or attorney trust account check and be valid for 120 days from the date of its issuance. The civil penalty shall be made payable to the Florida Elections Commission and sent to 107 West Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050, as a condition precedent to the Commission's execution of this Consent Order.

Respondent hereby agrees and consents to the terms of this Consent Order on


3-20, 2015.



Nathan McLaughlin
P.O. Box 351495
Palm Coast, FL 32135

The **Commission staff** hereby agrees and consents to the terms of this Consent Order on

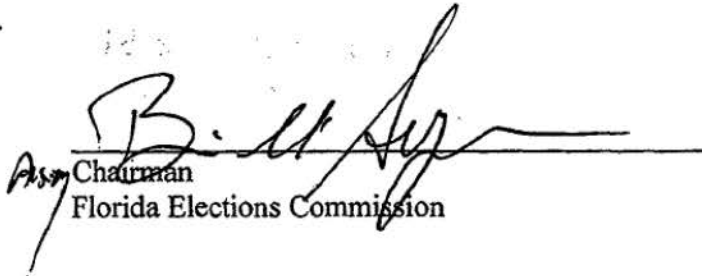
March 27, 2015.



Amy McKeever Toman, Executive Director
Florida Elections Commission
107 West Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting on

~~May 16, 17~~ ^{May 20, 17}, 2015.
DM


Chairman
Florida Elections Commission

Copies furnished to:
Amy McKeever Toman, Executive Director
Mark Herron, Attorney for Respondent
Mark Richter, Complainant

MESSER CAPARELLO, P.A.
TRUST ACCOUNT
P.O. BOX 15579
TALLAHASSEE, FL 32317
(850) 222-0720

CENTENNIAL BANK
TALLAHASSEE FL 32301
81-275/629

13385

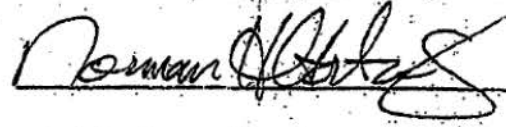
DATE: 03/26/2015
NUMBER: 13385
AMOUNT: *****\$250.00

PAY
TO THE
ORDER OF

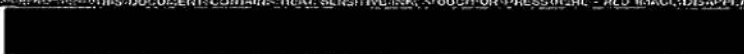
*** TWO HUNDRED FIFTY & 00/100 DOLLARS

Florida Elections Commission

MESSER CAPARELLO PA



FLAGLER COUNTY



DATE FILED

OCT 28 2015

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

COMMISSION ON ETHICS

In re NATHAN MCLAUGHLIN,)
)
Respondent.)
_____)

Complaint No. 15-145

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

On Friday, October 23, 2015, the Commission on Ethics met in executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for legal insufficiency, based on the following analysis:

1. This complaint was filed by Dennis McDonald of Flagler Beach, Florida.
2. The Respondent, Nathan McLaughlin, serves as a member of the Board of County Commissioners of Flagler County.
3. The complaint, which consists of a lengthy narrative and multiple attachments, much of which concerns officials or persons other than the Respondent, describes various alleged happenings of County government and officials. As to the Respondent, the complaint asserts that the Respondent failed to comply with the voting conflicts law, Section 112.3143(3)(a), Florida Statutes, regarding a December 2014 Board matter, brought to the Board's attention by

the County Attorney, concerning provision of a publicly-provided or publicly-funded legal defense for the Respondent and other public officials as to Commission on Ethics complaints and Elections Commission complaints.

4. The complaint substantively fails to indicate a possible violation of Section 112.3143(3)(a) or of Section 112.313(6), Florida Statutes.¹

5. Regarding Section 112.313(6), it is not inconsistent with the proper performance of public duty or wrongful (it is not "corrupt") for a board of county commissioners to further a

¹ Statutes provide:

VOTING CONFLICTS.—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 corporate principal 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 inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. [Section 112.3143(3)(a), Florida Statutes.]

MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31. [Section 112.313(6), Florida Statutes.]

'Corruptly' means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties. [Section 112.312(9), Florida Statutes.]

publicly-provided defense for themselves in matters at least arguably connected to their public positions. Indeed, such conduct would seem to be prudent and to serve a public purpose, regardless of whether a benefit also might accrue to the board members. Blackburn v. State Commission on Ethics, 589 So. 2d 431 (Fla. 1st DCA 1991). In addition, Section 112.313(5), Florida Statutes, provides:

SALARY AND EXPENSES.—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

While substantive law (statutes, case law, common law) outside the Code of Ethics controls or guides what constitutes "salary, expenses, or other compensation . . . as provided by law," Section 112.313(5) makes it plain that voting on such by a public officer is not prohibited by the Code.² Similarly, the complaint is not indicative of a possible violation of Section 112.3143(3)(a).³

6. It is evident that matters of the complaint are of great importance to the Complainant and others, and that the Complainant has devoted substantial time and energy into its filing. However, in sum, while the complaint raises matters which may be addressable in other forums (e.g., the courts, the Board of County Commissioners, the ballot box), it is not indicative of a possible violation of the Code of Ethics by the Respondent.

² The naming of someone individually in an ethics complaint or similar complaint is not, per se, preclusive of their ability to have a publicly-funded defense. See CEO 88-46.

³ Contents of the complaint asserting a law firm's trust account payment for an Elections Commission fine of the Respondent are not factually indicative of a possible misuse of public position or public resources by the Respondent. And, the Respondent's alleged "breaching of confidentiality" as to an ethics complaint against himself also is not, per se, indicative of a possible violation of Section 112.313(6).

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on October 23, 2015.

October 28, 2015
Date Rendered


Stanley M. Weston
Chair, Florida Commission on Ethics

cc: Mr. Mark Herron, Attorney for Respondent
Mr. Dennis McDonald, Complainant

SMW/cca/les

EXHIBIT C

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

DECEMBER 15, 2014

REGULAR MEETING

Present: Chairman Frank Meeker, Vice Chair Charles Erickson, Commissioners George Hanns, Barbara Revels and Nate McLaughlin, County Administrator Craig Coffey, County Attorney Al Hadeed, Chief Deputy Clerk Tom Bexley and Deputy Clerk Rhea Cosgrove

Chairman Meeker called the meeting to order at approximately 5:00 p.m. in the Board Chambers of the Government Services Building in Bunnell, Florida.

ITEM 1 - PLEDGE TO THE FLAG AND MOMENT OF SILENCE

Chairman Meeker led the Pledge to the Flag and requested a moment of silence.

ITEM 2 - ADDITIONS, DELETIONS AND MODIFICATIONS TO THE AGENDA

Chairman Meeker announced the following:

- Items 12 and 17 staff reports and backup documentation were added

ITEM 3 - ANNOUNCEMENTS BY THE CHAIR

Chairman Meeker announced the following:

- December 15, 2014 to April 30, 2015 – Varn Park closed for improvements
- December 18, 2014 at 1:00 p.m. – Flagler County Legislative Delegation meeting in the Board Chambers
- December 25 and 26, 2014 – County offices closed
- January 1, 2015 – County offices closed
- January 24 and 25, 2015 – Home Show at Flagler Palm Coast High School
- Flagler County soliciting registered voters for various boards and councils
- Upcoming Meetings:
 - January 12, 2015 at 5:00 p.m. – Regular Meeting in the Board Chambers

ITEM 4A - RECOGNITION - PARAMEDICS

Don Petito, Fire Chief, recognized Paramedics Bill Kerek and Albert Curley for saving the life of Barbara Walsh and presented them with Lifesaving Awards they could wear on their uniforms.

Barbara Walsh, Flagler Beach, recounted the events the day she had to call 911 and her heart stopped on the way to the hospital stating the two paramedics saved her life and thanked them.

ITEM 20 - COUNTY ADMINISTRATOR REPORT/COMMENTS

County Administrator Coffey reported the following:

- Flagler County signed an agreement with the American Society of Prevention of Cruelty to Animals
- Contractor mobilizing equipment at the Sheriff's Operation Center
- Flagler County received certification of the fire training tower
- Flagler County received a \$231,000 emergency management grant for Bunnell Elementary
- St. Johns River Water Management District donated 477 acres adjacent to the Princess Place Preserve to Flagler County
- Staff continued to meet with people on short-term vacation rentals and redrafting of the ordinance
- Justice Center sewer project now complete
- Information on new Ocean Hammock Golf Course Lodge development plan would be posted on County's website: flaglercounty.org

ITEM 21 - COUNTY ATTORNEY REPORT/COMMENTS

County Attorney Hadeed reported on the filings to the Ethics Commission and Elections Commission and specifically the fact findings Flagler County had to make in order to respond officially to the findings. Stated overall the filings challenged their actions as commissioners and himself as the county attorney and canvassing board attorney. Noted the allegations had been presented before and played out at meetings and in documents produced by the Supervisor of Elections. Stated the findings the BCC had to make by law extended to all of the filings that were related to the election process. Stated he was not speaking of actions taken by BCC members as candidates but rather actions they had taken as commissioners, noting the filings were a challenge on how the BCC discharged its responsibilities under the election laws. Stated they challenged the commissioners acting in their official capacities in performing their public duties and the same with himself in his official capacities as county attorney and canvassing board attorney. Stated the filings might as well have named the BCC as the respondent.

He reviewed the finding required by law:

- The allegations arose from the BCC carrying out of its official duties
- That a public purpose was being served at the time of these actions.
- Specifically that the present and future proceedings (accounting for those that might be in route) and the BCC's and his participation in them served a public purpose to resolve election related questions that were being raised.

Stated the County informed the news outlets it looked forward to having all of the evidence presented and to put the repetition of the allegations to final closure; ultimately they were important issues to the effective operation and maintenance of the administration of the elections. Even though the filings and the proceedings of these agencies were confidential by law he had to present proposed findings for the BCC's consideration at this point and the BCC members were to judge the findings based on their knowledge. Reiterated he was referring to the filings that addressed allegations about the administration of the elections, not as candidates, but as commissioners and himself as county attorney and canvassing board attorney.

Stated in order to officially proceed at this point the BCC would need a motion to add to the agenda findings in connection with all filings related to actions taken in official capacities for the 2014 elections and prior elections as they may be raised in those filings.

December 15, 2014
Regular Meeting

(Item 21 – continued)

A motion was made to add the above item to the agenda. Seconded by Commissioner McLaughlin.

Chairman Meeker requested public comments. There were none.

Chairman Meeker called the question. Motion carried unanimously.

A motion was made by Commissioner Revels of the following findings that allegations arose from the BCC members carrying out of their official duties; that a public purpose was being served at the time of these actions; and that participating in these present and future related proceedings served a public purpose to resolve election related questions that were being raised. Seconded by Commissioner McLaughlin.

Chairman Meeker requested public comments. There were none.

Chairman Meeker called the question. Motion carried unanimously.

ITEM 22 : COMMISSION ACTION

None

ITEM 23 : COMMUNITY OUTREACH

Jack Carall, Palm Coast, requested the BCC members get clip-on mics or to speak into the microphones so the public could hear them when they move around while speaking.

He requested the date and time of the Legislative Delegation meeting.

County Administrator Coffey replied the meeting was scheduled for Thursday, December 18, 2014 from 1:00 to 3:00 p.m.

ITEM 24 : COMMISSION REPORTS/COMMENTS

Commissioner Ericksen announced Faith Coleman, the founder and director of the Flagler County Free Clinic, lost her long battle with cancer. He wanted to recognize and applaud her contributions to Flagler County and the individuals she helped.

Commissioner Revels commented on how motivating Faith Coleman was to her volunteers. Noted Faith wished the clinic be kept alive and there was a group that promised to make sure it continued. Stated there would be a report forthcoming to the BCC on the Free Clinic.

EXHIBIT D



2 Walnut Grove Drive, Suite 210
Horsham, PA 19044
(215) 443-3595
Fax: (215) 773-7725
www.summitrisk.com

February 4, 2015

VIA CERTIFIED MAIL W/RR & U.S. REGULAR MAIL
7014 2120 0003 6689 2430

Flagler County BOCC
1769 E. Moody Boulevard, Building 2
Bunnell, FL 32110
Attn: Joseph A. Mayer, Community Services Director

Received 02/17/2015
Copied to Al Hadeed

VIA CERTIFIED MAIL W/RR & U.S. REGULAR MAIL
7014 2120 0003 6689 2423

Nate McLaughlin, Commissioner
Flagler County BOCC
1769 E. Moody Boulevard, Building 2
Bunnell, FL 32110

Re: Member: Flagler County Board of County Commissioners
Claimant: Mark Richter
Venue: Florida Commission on Elections
File: GO-1049 / 276021

Dear Messrs. Mayer & McLaughlin:

Summit Risk Services has partnered with Preferred Governmental Claim Services (PGCS) as Third Party Administrators on behalf of the Preferred Governmental Insurance Trust (Preferred).

We acknowledge receipt of a Complaint filed by Complainant Mark Richter against County Commissioner Nate McLaughlin. The Complaint was filed on or about December 1, 2014 with the State of Florida Elections Commission. We received the Complaint on December 16, 2014 from Preferred.

Mark Richter alleges that a joint campaign advertisement which asked voters to "Vote for Flagler County Commissioners Frank J. Meeker and Nate McLaughlin" did not include the "exact" candidate disclaimer required under Florida law.

We are evaluating a tender for insurance coverage to Preferred on behalf of the individual and or entity to whom this letter is addressed. Unless we hear from you to the contrary we will assume that coverage is being tendered to Preferred only under the under referenced Coverage Agreement and is being tendered on behalf of only those to whom our coverage letter is addressed. The Flagler County BOCC is the Covered Party with Public Officials and Employment Practices Liability insurance coverage under Coverage Agreement Number PKFL1018101814-13 issued by Preferred with a Coverage Agreement Period from October 1, 2014 to October 1, 2015. The Coverage Agreement carries a per

claim Limit of Liability of \$1,000,000 subject to a Coverage Agreement Aggregate Limit of \$1,000,000. The Coverage Agreement also includes a \$5,000 deductible or self-insured retention. The Covered Party's retention obligation includes initial payment up to the retention amount for defense and/or indemnity costs.

We have determined that there is no coverage for this loss under the Public Officials Agreement. Please refer to the following sections of this Agreement:

PUBLIC ENTITY

PUBLIC OFFICIALS LIABILITY AND EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

In consideration of the payment of the premium, in reliance upon the Application, and subject to the Declarations and the terms and conditions of this Coverage Agreement, the Covered Parties and the Trust agree as follows:

SECTION I - COVERAGE AGREEMENTS

A. Political Officials' Liability

The Trust will pay on behalf of the Covered Party all sums in excess of the Deductible that the Covered Party shall become legally obligated to pay as Damages and Claim Expenses because of a Claim first made against the Covered Party and reported to the Trust during the Agreement Period or, if exercised, the Extended Reporting Period, by reason of a Wrongful Act in the performance of or failure to perform duties for the Public Entity. The Wrongful Act must have been committed on or subsequent to the Retroactive Date specified in the Declarations and before the end of the Agreement Period.

Additionally, please refer to:

II. SUPPLEMENTARY PAYMENTS

B. Non-Monetary claims

The Trust shall defend a claim seeking relief or redress in any form other than monetary damages, or Claims Expenses for a Claim seeking such non-monetary relief, subject to the following conditions:

1. Defense costs under this section have an aggregate limit of liability of \$100,000 beyond the member's deductible. This limit shall be part of the Limit of Liability stated in the Declarations, and subject to the per Claim Deductible;
2. The Trust defends the Claim from first notice to Covered Party.

Section III Definitions Provides:

F. Claim means:

1. a civil proceeding against any **Covered Party** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading; and
2. an administrative proceeding including but not limited to EEOC or other regulatory proceeding against any **Covered Party**, commenced by the filing of a notice of charges, investigative order or similar document.

D. Bodily Injury means injury to the body, sickness, or disease, including death resulting from such injuries. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.

K. Personal Injury means injury arising out of one or more of the following offenses:

1. false arrest, detention or imprisonment;
2. Malicious prosecution;
3. libel, slander or other defamatory or disparaging material;
4. publication or an utterance in violation of an individual's right to privacy; and wrongful entry or eviction, or other invasion of the right to private occupancy.

M. Property Damage means:

1. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof; and
2. loss of use of tangible property which has not been physically injured, damaged or destroyed.

Additionally, please refer to:

IV. EXCLUSIONS

The **Trust** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

- A. based upon, arising out or attributable to any actual dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law by a **Covered Party**.
- B. seeking relief or redress in any form other than monetary damages, or **Claims Expenses** for a **Claim** seeking such non-monetary relief, except as provided in the Supplementary Payments above.

C. alleging, based upon, arising out or attributable to any:

1. **Bodily Injury;**
2. **Property Damage;**
3. **Personal Injury;**
4. **Advertising Injury;**
5. any allegation that a **Covered Party** negligently employed, investigated, supervised or retained any person who is liable or responsible for such injury or damage, as it relates to items C 1, 2, 3 and 4 above; or
6. any willful violation of any statute, ordinance or regulation committed by you or with your knowledge or consent as it relates to items C 1, 2, 3 and 4 above.

D. alleging, based upon, arising out or attributable to inverse condemnation, eminent domain, temporary or permanent taking, adverse possession, dedication by adverse use, condemnation proceedings, or claims brought under Florida Statute 70.001, the "Bert J. Harris, Jr., Private Property Rights Protection Act," or any similar claim by whatever name called.

G. alleging, based upon, arising out or attributable to the gaining in fact of any profit or financial advantage to which the **Covered Party** was not legally entitled.

M. alleging, based upon, arising out or attributable to breach of contract, warranty, guarantee or promise unless such liability would have attached to the **Covered Party** even in the absence of such contract, warranty, guarantee or promise. However, this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practices**.

N. alleging, based upon, arising out or attributable to any actual or alleged liability assumed by the **Covered Party** under any contract or agreement, unless such liability would have attached to the **Covered Party** even in the absence of such contract.

V. arising out of any act or omission resulting from law enforcement activities or any police department or any other law enforcement agencies, including their agents or employees.

The Coverage Agreement provides that Preferred will pay damages and claims expenses by reason of a wrongful act in the performance of or failure to perform duties for the Public Entity. Because the wrongful acts alleged by Mr. Richter were not performed in the performance of your duties as a Commissioner for the Flagler County BOCC but rather in your individual capacity as a candidate running for election, there is no coverage for this claim under the Coverage Agreement.

Please note that pursuant to Exclusion "A", there is no coverage for dishonest, criminal, or fraudulent acts or intentional violations of law. Pursuant to Exclusion "B", there is no coverage for Claims in which the Complainant is seeking relief or redress in any form other than monetary damages, or for attorney's fees stemming from an adverse judgment for Injunctive or Declaratory Relief.

Pursuant to Exclusion "G", there is no coverage under the Agreement for claims alleging, based upon, arising out or attributable to the gaining in fact of any profit or financial advantage to which you were not legally entitled

Flagler County BOCC
Claim No. GO-1049
Page 5

Preferred will therefore not be providing a defense or indemnification in this matter.

If you have any facts or additional information in your possession which would change or alter the facts on which we have based our decision, please forward it to my attention immediately.

Preferred reserves its rights to further supplement or alter our coverage position due to any new or additional information.

Very truly yours,

Summit Risk Services

By: 

Edward A. Kron
kron@summitrisk.com
(215) 443-3597

Copy: Kathy Fidler
PGCS Claim Services



EXHIBIT E

2 Walnut Grove Drive, Suite 210
Horsham, PA 19044
(215) 443-3595
Fax: (215) 773-7725
www.summitrisk.com

February 4, 2015

VIA CERTIFIED MAIL W/RR & U.S. REGULAR MAIL
7014 2120 0003 6689 2447

Flagler County BOCC
1769 E. Moody Boulevard, Building 2
Bunnell, FL 32110
Attn: Joseph A. Mayer, Community Services Director

Received 02/09/2015
Copied to Al Hadeed

VIA CERTIFIED MAIL W/RR & U.S. REGULAR MAIL
7014 2120 0003 6689 2775

Nate McLaughlin, Commissioner
Flagler County BOCC
1769 E. Moody Boulevard, Building 2
Bunnell, FL 32110

Re: Member: Flagler County Board of County Commissioners
Claimant: Mark Richter
Venue: Florida Commission on Elections
File: GO-1050 / 276023

Dear Messrs. Mayer & McLaughlin:

Summit Risk Services has partnered with Preferred Governmental Claim Services (PGCS) as Third Party Administrators on behalf of the Preferred Governmental Insurance Trust (Preferred).

We acknowledge receipt of a Complaint filed by Complainant Mark Richter against County Commissioner Nate McLaughlin. The Complaint was filed on or about December 2, 2014 with the State of Florida Elections Commission. We received the Complaint on December 16, 2014 from Preferred.

Mark Richter alleges that a joint campaign advertisement which asked voters to "Vote for Flagler County Commissioners Frank J. Meeker and Nate McLaughlin" did not include the "exact" candidate disclaimer required under Florida law. Specifically, Mr. Richter alleges the following: "...Another smaller yellow sized advertisement advocating the re-election of Frank J. Meeker and Nate McLaughlin was distributed during the 2014 election season and it also failed to display the required 'exact' political disclaimer identified in FS 106.143(1)(a). A separate complaint was filed with the Florida Elections Commission regarding this advertisement, but it is being identified in this complaint to show a pattern." Richter also alleges that on July 15, 2014 McLaughlin contributed \$50 to fellow Commissioner Frank Meeker's political reelection campaign in violation of state campaign laws.

We are evaluating a tender for insurance coverage to Preferred on behalf of the individual and or entity to whom this letter is addressed. Unless we hear from you to the contrary we will assume that coverage

EXHIBIT E

is being tendered to Preferred only under the under referenced Coverage Agreement and is being tendered on behalf of only those to whom our coverage letter is addressed. The Flagler County BOCC is the Covered Party with Public Officials and Employment Practices Liability insurance coverage under Coverage Agreement Number PKFL1018101814-13 issued by Preferred with a Coverage Agreement Period from October 1, 2014 to October 1, 2015. The Coverage Agreement carries a per claim Limit of Liability of \$1,000,000 subject to a Coverage Agreement Aggregate Limit of \$1,000,000. The Coverage Agreement also includes a \$5,000 deductible or self-insured retention. The Covered Party's retention obligation includes initial payment up to the retention amount for defense and/or indemnity costs.

We have determined that there is no coverage for this loss under the Public Officials Agreement. Please refer to the following sections of this Agreement:

PUBLIC ENTITY

PUBLIC OFFICIALS LIABILITY AND EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Coverage Agreement**, the **Covered Parties** and the **Trust** agree as follows:

SECTION I - COVERAGE AGREEMENTS

A. Political Officials' Liability

The **Trust** will pay on behalf of the **Covered Party** all sums in excess of the Deductible that the **Covered Party** shall become legally obligated to pay as **Damages** and **Claim Expenses** because of a **Claim** first made against the **Covered Party** and reported to the **Trust** during the **Agreement Period** or, if exercised, the **Extended Reporting Period**, by reason of a **Wrongful Act** in the performance of or failure to perform duties for the **Public Entity**. The **Wrongful Act** must have been committed on or subsequent to the **Retroactive Date** specified in the Declarations and before the end of the **Agreement Period**.

Additionally, please refer to:

II. SUPPLEMENTARY PAYMENTS

B. Non-Monetary claims

The **Trust** shall defend a claim seeking relief or redress in any form other than monetary damages, or **Claims Expenses** for a Claim seeking such non-monetary relief, subject to the following conditions:

1. **Defense costs** under this section have an aggregate limit of liability of \$100,000 beyond the member's deductible. This limit shall be part of the Limit of Liability stated in the Declarations, and subject to the per **Claim Deductible**;
2. The Trust defends the Claim from first notice to **Covered Party**.

Section III Definitions Provides:

F. Claim means:

1. a civil proceeding against any **Covered Party** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading; and
2. an administrative proceeding including but not limited to EEOC or other regulatory proceeding against any **Covered Party**, commenced by the filing of a notice of charges, investigative order or similar document.

D. Bodily Injury means injury to the body, sickness, or disease, including death resulting from such injuries. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.

K. Personal Injury means injury arising out of one or more of the following offenses:

1. false arrest, detention or imprisonment;
2. Malicious prosecution;
3. libel, slander or other defamatory or disparaging material;
4. publication or an utterance in violation of an individual's right to privacy; and wrongful entry or eviction, or other invasion of the right to private occupancy.

M. Property Damage means:

1. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof; and
2. loss of use of tangible property which has not been physically injured, damaged or destroyed.

Additionally, please refer to:

IV. EXCLUSIONS

The **Trust** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

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 - 3. **Personal Injury;**
 - 4. **Advertising Injury;**
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 - 6. any willful violation of any statute, ordinance or regulation committed by you or with your knowledge or consent as it relates to items C 1, 2, 3 and 4 above.
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- G. alleging, based upon, arising out or attributable to the gaining in fact of any profit or financial advantage to which the **Covered Party** was not legally entitled.
- M. alleging, based upon, arising out or attributable to breach of contract, warranty, guarantee or promise unless such liability would have attached to the **Covered Party** even in the absence of such contract, warranty, guarantee or promise. However, this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practices**.
- N. alleging, based upon, arising out or attributable to any actual or alleged liability assumed by the **Covered Party** under any contract or agreement, unless such liability would have attached to the **Covered Party** even in the absence of such contract.
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Pursuant to Exclusion "G", there is no coverage under the Agreement for claims alleging, based upon, arising out or attributable to the gaining in fact of any profit or financial advantage to which you were not legally entitled

Preferred will therefore not be providing a defense or indemnification in this matter.

If you have any facts or additional information in your possession which would change or alter the facts on which we have based our decision, please forward it to my attention immediately.

Preferred reserves its rights to further supplement or alter our coverage position due to any new or additional information.

Very truly yours,

Summit Risk Services

By: 

Edward A. Kron
kron@summitrisk.com
(215) 443-3597

Copy: Kathy Fidler
PGCS Claim Services