

FLORIDA
COMMISSION ON ETHICS
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Virlindia Doss, Executive Director
Commission on Ethics
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VIA ELECTRONIC MAIL
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CONFIDENTIAL

Re: In re James L. Manfre
Complaint No. 14-097
Our File No.: F300 - 121460

Dear Ms. Doss:

As provided for in the September 19, 2014, Report of the Investigation (Report) in the above-referenced matter, the Respondent Sheriff James Manfre responds as follows.

The Determination of Investigative Jurisdiction and Order to Investigate identified six findings that led to the compiling and completion of the Report. (See attached exhibit from the Report.) The Executive Director directed staff to “conduct a preliminary investigation . . . for a probable cause determination whether the Respondent has violated Sections 112.313(6) and 112.3148(8), Florida Statutes.”

To determine whether a violation of Chapter 112.313(6) has occurred, the Commission must determine if the Respondent acted with a corrupt intent. Corrupt intent is shown when an officer acts with wrongful intent, that is, with reasonable notice that his conduct is inconsistent with the proper performance of public duties and is a violation of the law or the Code of Ethics in Part III of Chapter 112. *Blackburn v. Commission on Ethics*, 589 So. 2d 431 (Fla. 1st DCA 1991). Prior Commission final orders and opinions provide fair and reasonable notice as to what conduct is prohibited by Section 112.313(6)¹. *Blackburn, supra*. Nothing in the Report in the present case suggests that the Respondent acted with a corrupt intent.

Throughout his interview with the investigator, the Respondent repeatedly advised that he did not believe he was doing anything wrong. If he had a question about how to handle a financial transaction, he relied on the Complainant who was the person at the Flagler County Sheriff's Office (FCSO) who organizationally had the most knowledge and experience with managing financial matters. Even if the Respondent did not specifically request her input, based on her role in the organization, she should have been proactive in providing caution, advice and guidance. While the Respondent admitted to, and takes responsibility for his actions, the

¹ Undersigned counsel has been unable to identify an ethics opinion that addresses the same or similar facts in this matter.

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Respondent urges the Commission to consider the Complainant's silence regarding her observation and knowledge of the Respondent's actions.

As an initial matter, the Respondent's intent to maintain the highest ethical standards is evident in his October 24, 2012, quote in which he promised "I will return the office to community policing, high ethical standards and a business approach to budgeting." At all relevant times, Respondent's conduct evidences the high regard he holds for the rule of law and his ethical obligations as Sheriff of Flagler County.

The Complainant's unclean hands

While the Respondent takes responsibility for his actions, the Commission should consider the retaliatory motivation of the Complainant, Ms. Linda Bolante, in this matter. As indicated in the Report, the Complainant, at any juncture of her employment, could have provided reasonable notice to the Respondent that she believed that his actions were inconsistent with what she believed to be Sheriff's Office policies and directives. The Respondent was a private citizen for eight years after leaving office as Sheriff in 2005. Expecting him to remember the specifics of how certain tasks were handled is unreasonable. Because the Complainant worked continuously at the Sheriff's Office in the intervening years and observed changing policies and practices, she clearly could have advised or reminded the Respondent of how he did things in the past, especially in light of the fact that she claims to have remembered while he did not. As the Business Services Director earning in excess of \$90,000 per year, the Respondent expected her to be fully engaged in providing information on any topic involving agency finances. Instead, she failed to advise the Respondent that his actions were inconsistent with the prior administration or with actions the Respondent took while serving as the Sheriff from 2001-2005. Further, she chose to remain silent until she could act in a manner that best suited her personal agenda.² Although the Complainant maintains that she "retired from the FCSO on March 31, 2014, because she was forced to retire or face termination at the direction of the Respondent," her missteps in failing to fulfill a key responsibility as evidenced by her admissions in this report indicate a person who had an agenda other than to do what was in the best interest of her employer or the persons served by the agency.

When he took office, the Respondent was fully aware that the Complainant supported the Respondent's opponent. He believed that because of their prior working relationship and his intent to have harmonious relationships with other area sheriffs³, he chose to retain her as an employee. While he made changes to her employment such as removing her agency-issued vehicle, requiring her to dress in a manner consistent with being in a director position, and expecting her to work business hours of eight to five rather than six to two, having all directors report to the undersheriff rather than directly to him, he expected her to perform her duties. As evidenced by Complainant's own admissions, she failed to satisfactorily do so.

Allegation that the Respondent had his paycheck issued early

According to the Report ¶5, the Complainant could have and should have advised the Respondent that there was not a policy which allowed her to issue the Respondent's payment

² The Complainant supported the Respondent's opponent in the November 2012 general election.

³ Complainant's husband is the Undersheriff in neighboring St. Johns County.

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early, that she had never done so before and that she would have to make further inquiry. The Complainant did neither; she simply complied with the request without any coercion from the Respondent and did not suggest in any way whatsoever that there was a problem. The Respondent had no way of knowing that he was seeking a benefit for himself that was unavailable to anyone else. As with the other allegations, the absence of reasonable notice that his actions were improper defeats any proof of corrupt intent. Further, the Complainant appears to have taken the additional step of requesting the paycheck from the County. If there was a concern with early issuance, the Complainant made no reference that the clerk of the court who issued the paycheck expressed any caution to the Respondent or in any way hesitated to fulfill Complainant's Request on behalf of Respondent.

Allegations of use of county vehicles

The Respondent admits to using his County-issued vehicle to take trips that were personal in nature that served the specific public purpose of allowing him to expediently return to Flagler County, if necessary. As the Sheriff and head law enforcement officer for the entire county, Respondent was ultimately responsible for the supervision of all deputies and for the safety of all Flagler County residents. These duties, however, do not prohibit him from leaving the county, but require his ability to respond quickly in times of emergency. He has reimbursed the FCSO for mileage for all of the trips, not because he believed that his actions were improper, but because of his sensitivity to public perception of his actions. At the time the Respondent was using the vehicle, the Complainant was aware of the use and rather than advise or question the Respondent's use at her earliest knowledge, she remained silent throughout her employment. When she learned of the January 2013 trip she said nothing because "it did not occur to her at that time." Apparently "the time" (more than six months after first becoming aware of the trip) for speaking to the Respondent about the use of the vehicle was following her negotiated retirement through the filing of the instant complaint. Further, Undersheriff Staly, a long-service law enforcement officer, did not express concern about the Respondent's use of the vehicle at that time either. The Respondent and the Undersheriff acknowledge that "lights and siren" equipment in the vehicle would allow the Respondent to return to Flagler County more quickly than using his personal vehicle. Significantly, absent from the Report is any mention of any reasonable notice that the Sheriff's actions were improper. The policies included in the Report are not applicable to the Respondent; however, prior to the filing of the instant action, the Respondent promptly and voluntarily promulgated a policy that clearly defined vehicle use by everyone in the agency. Thus bringing himself under the policy's umbrella and further demonstrating his lack of corrupt intent. Importantly, corrupt intent cannot be inferred when a public official reasonably relies on employees, like Complainant, who have expertise in these matters and then changes his conduct, not because he believes he's done anything wrong, but because of the public perception of his actions.

Allegations of credit card mis-use

While disputed by the Complainant, the Respondent sought out the Complainant's direction regarding how to handle the reimbursement of travel expenses before making his first trip. It bears repeating that even if the Respondent did not specifically inquire about the accounting of expenses, the Complainant, as the Chief Financial Officer for the organization,

should have provided instruction. The Complainant, the person who, through her job duties and title, was presumed to have the most knowledge about accounting and financial matters at the agency, claims that she did not realize that there was a problem until her department was asked to comply with a public records request in October 2013. If the department's finance expert lacked notice of the alleged impropriety of Respondent's conduct, such notice should not be imputed to Respondent. Notably, the Respondent does not dispute his actions but again, the Complainant's actions and competence are central to this allegation. The Complainant was clearly not fulfilling her responsibility to protect the agency's finances because she admits that she did not know that the Respondent was not in compliance with travel reimbursement practices until she was required to provide documents in response to a public records request. Even more interesting is that rather than explain that the Flagler County Sheriff's Office (FCSO) did not have the requested documents because she had not required them, she laid the blame at the Respondent's feet. In October 2013, the Complainant, for the first time, asked the Respondent for itemized receipts for trips taken months before. When he was unable to produce them, she was instructed to contact the vendors to obtain itemized receipts. At the meeting when the Complainant explained what was lacking and what was needed, the Respondent was extremely displeased with the Complainant because he expected her to keep a careful eye on documentation of expenses and make him, and everyone else, aware of appropriate procedures, including the deficiency of any paperwork at the time of submission.

The Respondent initially provided the receipts as he believed he had been instructed to by the Complainant. Upon being advised in November 2013 that he could not use the agency credit card to purchase meals for the public or alcohol, he never used the agency credit card for that purpose again. As with the other allegations in this complaint, there is no evidence of a corrupt intent because when Respondent was provided notice he immediately altered his conduct to conform with Complainant's expert advice. Had the Complainant been performing her job as expected, she would have advised the Respondent that his actions were inappropriate upon the first instance. Interestingly, the Complainant has no recall of learning from her assistant, Linda Tannuzzi, that detailed receipts were not being provided or that the agency credit card was being used to purchase improper meals and alcohol. As insight into the Respondent's intent, when the Complainant's subordinate requested from the Respondent information about who was present at a luncheon he responded through his assistant. Further, rather than engaging in conduct that was inconsistent with the ethical provisions, the Respondent promulgated a clearly-defined policy specifically prohibiting the conduct and providing guidance on the use of the agency credit card. (Report ¶44-46)

Failure to disclose a gift

The Respondent has attempted to comply with Chapter 112.3148(8) as this provision applies to his acceptance of an offer from Undersheriff Staly to use a cabin in Pigeon Forge, Tennessee. The Respondent did not realize this was a reportable item until late 2013 or early 2014 following a training presentation. He has filed a disclosure but was uncertain as to what to report. The Respondent will file a corrected disclosure upon clarification as to the appropriate amounts based on the actual days he stayed at the cabin.

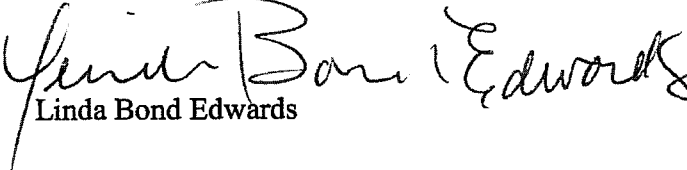
Based on the foregoing and on the testimony the Respondent provided during the investigation, the Commission's Advocate lacks the factual support to recommend a probable

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cause determination to the Commission because the Respondent did not display corrupt intent in any action he took. Instead, the factual record is replete with evidence of Respondent's intent to comply with all rules and regulations. Where there was an error resulting from a misunderstanding or lack of guidance from Complainant, Respondent took prompt corrective action and reversed policies to ensure future compliance. The Respondent therefore requests that the Advocate request dismissal of all of the allegations in the Complaint.

Sincerely,


Linda Bond Edwards

LBE/ams

Enclosure

cc: Sheriff James Manfre
Sidney Nowell, Esq.

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

DATE FILED

JUN 05 2014

COMMISSION ON ETHICS

In re JAMES L. MANFRE,)
)
 Respondent.)
_____)

Complaint No. 14-097

CONFIDENTIAL

DETERMINATION OF INVESTIGATIVE JURISDICTION
AND ORDER TO INVESTIGATE

UPON REVIEW of this complaint, I find as follows:

1. This complaint was filed by Linda Bolante, of St. Augustine, Florida.
2. The Respondent, James L. Manfre, serves as the Sheriff of Flagler County.
3. The complaint alleges the Respondent had his paycheck as Sheriff issued early.

This indicates possible violation of Section 112.313(6), Florida Statutes, by the Respondent.

4. The complaint next alleges the Respondent used Sheriff's Office vehicles for personal or private purposes. This indicates possible violation of Section 112.313(6), Florida Statutes, by the Respondent.¹

5. The complaint further alleges the Respondent failed to disclose a gift that he received, namely spending five consecutive nights in a co-worker's cabin. This indicates possible violation of Section 112.3148(8), Florida Statutes, by the Respondent.²

¹ The complaint also alleges the Respondent violated Section 316.066(1)(e), Florida Statutes, by failing to report an accident which occurred while he was driving a vehicle. This provision does not set forth a standard of conduct enforceable by the Commission on Ethics.

² The alleged free repair of a Sheriff's office vehicle is indicative of a gift to the Office, not to the Respondent personally.