

JUL 12 2016

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

In re: Colleen Conklin-Walsh,

Respondent.

Complaint No. 16-011

ADVOCATE'S RECOMMENDATION

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

RESPONDENT

Respondent, Colleen Conklin-Walsh, serves as a member of the Flagler County School Board.

JURISDICTION

The Executive Director of the Commission on Ethics ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.3144(6), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on April 21, 2016.

ALLEGATION

Respondent is alleged to have violated Section 112.3144(6), Florida Statutes, by willfully failing to file a 2013 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Section 112.3144(6), Florida Statutes, provides as follows:

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

In order to establish a violation of Section 112.3144(6), Florida Statutes, the following elements must be proved:

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

ANALYSIS

Since 2000, Respondent has served as a member of the Flagler County School Board. (ROI 1) She served in this position throughout the year 2013. (ROI 1) This position required the filing of a CE Form 6, "Full and Public Disclosure of Financial Interests" for that year. (ROI 1)

Respondent failed to file her 2013 CE Form 6 by its original due date of July 1, 2014 nor by September 3, 2014 which was the "grace period" deadline for filing the form. (ROI 2) As a result of the latter, a \$25 per day fine began to accrue. (ROI 9)

Prior to the September deadline, the Commission on Ethics sent a certified letter to Respondent on July 31, 2014 advising that her 2013 CE Form 6 was delinquent. (ROI 9) On August 14, 2014, the Commission sent a courtesy postcard to Respondent advising that her form had not been received. (ROI 9) On September 4, 2014, the Commission sent a letter to Respondent advising that an automatic fine of \$25 per day was accruing because she had not filed her form. (ROI 9)

On October 10, 2014, a Commission staff member had a telephone conversation with Respondent regarding the fine accrual and how filing her form would stop the accrual. (ROI 9) On November 1, 2014, Respondent accrued the maximum fine of \$1500 authorized by Section 112.3144(5)(e), Florida Statutes, for failing to file her form. (ROI 2)

In April 2015, Respondent appealed her fine and provided a sworn affidavit¹ in which she advised that she completed her 2013 CE Form 6 and asked her husband to mail it to the Commission.² (ROI 4, Exhibit A3-A4) In the affidavit, she acknowledged receipt of an August

¹ The affidavit contains a scrivener's error in the first line regarding who it is that is making an appearance before the notary; however, Respondent signed the document. (Exhibit A3)

² Respondent submitted a 2013 CE Form 6 with her appeal in April 2015. (ROI 6, Exhibit A6-A7) She submitted another 2013 CE Form 6 on July 29, 2015. (ROI 6, Exhibit B)

2, 2014 notification advising her that her form had not been received. (ROI 4, Exhibit A3-A4) She began the process of completing a new form when her husband found the original form/envelope in his car in late August 2014. (ROI 4, 5, Exhibit A3-A6) She advised that she mailed that form to the Commission on or about September 2, 2014. (ROI 4, Exhibit A3-A4) As noted above, Commission records show that a staff member spoke with Respondent about her missing form in October 2014 thus placing her on notice that the form still had not been received prior to the maximum fine accruing on November 1st.

The Commission denied Respondent's fine appeal on December 11, 2015. (ROI 9) Respondent paid the fine on January 12, 2016. (ROI 9, 10)

Respondent's history with late filings and fines is as follows:

Form Year	Days Late	Fine	Date Paid
2013 Form 6	60	1500	12-Jan-2016
2009 Form 6	6	150	2-May-2011
2008 Form 6	3	75	16-Nov-2009
2005 Form 6	4	100	18-Jul-2011
2004 Form 6	1	25	20-Sep-2006
2003 Form 6	14	350	Fine Removed

Respondent is currently a public officer. At the time that the maximum fine accrued on November 1st, Respondent had not filed her 2013 CE Form 6 even after receiving notice from the Commission. Respondent's failure to file after receiving notice and the maximum fine accrual triggered the Commission to initiate an investigation into whether Respondent's failure to file was willful. (ROI 3) While Respondent contends that the form was mailed, she was notified several times that the form had not been received. Considering Respondent had previously been fined for late filings, it should be noted that she was not a stranger to the process. As Respondent acknowledged that she was on notice that her 2013 CE Form 6 had not been received prior to the deadline, it is apparent that she willfully failed to file it by November 1st.

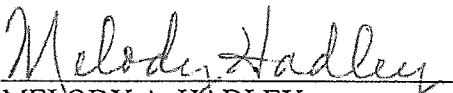
Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3144(6), Florida Statutes.

RECOMMENDATION

It is my recommendation that,

There is probable cause to believe that Respondent violated Section 112.3144(6), Florida Statutes, by willfully failing to file a 2013 CE Form 6, "Full and Public Disclosure of Financial Interests."

Respectfully submitted this 12th day of July, 2016.


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