

EXECUTIVE DIRECTOR'S REPORT

TO: Members, Commission on Ethics

FROM: Kerrie Stillman
Executive Director

DATE: November 20, 2024

ADVISORY OPINIONS

The Commission on Ethics issued two opinions at its October meeting. It has rendered 2,708 opinions since its inception in 1974.

LITIGATION

Case Number 2024 CA 000283, Town of Briny Breezes, Florida et al. v. Lukis et al. (Fla. 2nd Circ. Ct., Leon County). (Jamie A. Cole, Edward G. Guedes, Counsel for Plaintiffs; Kimberly Romano Kopp, Co-Counsel for City of Destin). Plaintiffs are multiple municipalities and elected municipal officers. They are challenging the validity of the requirement in Section 112.3144, Florida Statutes, that municipal elected officials and municipal candidates must file a CE Form 6 financial disclosure. In essence, Plaintiffs' argument is that requiring municipal elected officials and municipal candidates to publicly disclose the information required on the CE Form 6 violates their right to privacy under Article II, Section 23 of the Florida Constitution. Plaintiffs claim there is no compelling state interest that would justify having these types of officers and candidates disclose that degree of the information, and, even if there was a compelling interest, requiring these officers and candidates to file a CE Form 6 is not the least restrictive means of accomplishing that interest when the CE Form 1 is also available. Plaintiffs seek a declaration that extending the requirements in Section 112.3144 to municipal elected officials and municipal candidates is unconstitutional, an injunction against enforcing this provision of the law, and legal costs. The Office of the Attorney General is representing Defendants. Defendants have filed a motion to dismiss and Plaintiffs have responded. We await an order on the motion. In the meantime, the case has been reassigned to a different judge. Gray Schafer and Steven Zuilkowski are the Commission's points of contact with lead counsel.

Case 1:24-cv-20604-JAL, President of Town Council Elizabeth A. Loper, elected official of the Town of Briny Breezes, et al. v. Lukis et al. (United States District Court Southern District of Florida). (Jamie A. Cole, Edward G. Guedes, Counsel for Plaintiffs; Kimberly Romano Kopp, Co-Counsel for City of Destin). Plaintiffs are multiple elected municipal officers. They are challenging the validity of the requirement in Section 112.3144, Florida Statutes, that municipal elected officials and municipal candidates must file a CE Form 6 financial disclosure. Plaintiffs' argument is that requiring these types of officers and candidates to publicly disclose the information required on the CE Form 6 violates their First Amendment rights under the United States Constitution, as it is government-compelled, content-based, non-commercial speech. Plaintiffs seek a declaration that extending the requirements in Section 112.3144 to municipal elected officials and municipal candidates is unconstitutional, an injunction against enforcing this provision of the law, and legal costs and fees. The Office of the Attorney General is representing the defendants. Defendants filed their Answer Brief on September 5. Plaintiffs and Defendants filed Motions for Summary Judgment on October 11, and responses and replies were filed after

that. A hearing on summary judgment has not yet been scheduled. Gray Schafer and Steven Zuilkowski will be the Commission's points of contact with lead counsel.

Case Number 1D22-924, Daphne Campbell v. Florida Commission on Ethics (Fla. 1st DCA). This is an appeal of Complaint No. 18-090. (James Jean-Francois, Counsel for Appellant). On January 3, 2023, the Commission filed a Motion to Strike the Reply Brief on the basis that it raised entirely new arguments not addressed in the Initial Brief. In the alternative, the Commission asked that it be given leave to file a limited response to the arguments raised in the Reply Brief. On January 20, 2023, the Court issued an order deferring a ruling on the Motion to Strike to the panel of judges considering the merits of the appeal. Neither party requested oral argument. On January 3, 2024, Gray Schafer contacted the clerk's office to check on the case, as it has been a year since the Motion to Strike; the clerk's office confirmed that the case is yet to be decided. On November 20, 2024, the First District issued an opinion finding competent, substantial evidence supported the Commission's fact findings, and affirming the Commission's final order. In a footnote, the First District stated it would not consider the arguments raised for the first time in the Reply Brief. Gray Schafer, Melody Hadley, and Steven Zuilkowski handled the appeal. The penalties recommended by the Commission were sent to the Speaker of the House and the President of the Senate when the Commission rendered its final order on this matter prior to the appeal.

Case Number 1D22-3429, Douglas Underhill v. State of Florida, Commission on Ethics (Fla. 1st DCA). This is an appeal of Complaint Nos. 20-060, 20-073, and 20-103 (cons.). (Mark Herron, Counsel for Appellant). All briefs are filed. Neither side requested oral argument. We now await the Court's ruling. Melody Hadley, Gray Schafer, and Steven Zuilkowski are handling the appeal.

USCA Case No. 23-12663 (11th Circuit Court of Appeals), and S.D. Fla. (1:22-CV-24156-BB) Garcia et al. v. Stillman et al. (Scott Hiaasen, Benedict Kuehne, Ron Book, and Robert H. Fernandez, Counsel for Plaintiffs). The District Court entered final judgment in favor of the Plaintiffs, finding that Article II, Section 8(f)(2), was an unconstitutional abridgment of free speech. The District Court enjoined the Commission from enforcing the provision on any public officer in the State. Defendants appealed. The 11th Circuit has stayed the injunction pending a final adjudication of the appeal. The Office of the Solicitor General is representing Defendants in the appeal. All briefs are filed. Oral argument is now scheduled for February 24, 2025. Steven Zuilkowski is monitoring the appeal.

STAFF ANNOUNCEMENTS AND SPEAKING ENGAGEMENTS

We welcomed Michael Wiederspahn to our investigative team on November 4. He is retired from service with the FBI.

Staff Member Ethics Complaint. The Commission recently dismissed an ethics complaint with a finding of no probable cause. The complainant in that matter has now filed an ethics complaint against one of the Commission's ethics investigators who investigated the original complaint. The new complaint is currently before the Senate President and the Speaker of the House pursuant to Section 112.324(10), Fla. Stat, and consideration of the complaint will remain with the House and Senate and will never come before the Commission on Ethics at any

stage. This staff member is entitled to the provision of an attorney by the Commission because the complaint entirely arises from his performance of the investigation—official duties that served a public purpose. Steven Zuilkowski represents the employee.

FINANCES

As of October 31, we've spent \$1,000,985.34 (33.44%) of our appropriation, with 33.33% of the FY gone.

PENDING ORDERS IMPOSING PENALTIES

GOVERNOR

- Complaint No. 15-178, In re Michael S. Murphy (Final Order 08/03/16)
- Complaint No. 17-108, In re Joel Davis (Final Order 06/13/18)
- Complaint No. 17-088, In re Cheryl Thomas-Hughes (Final Order 12/12/18)
- Complaint No. 16-062, In re Dennis McDonald (Final Order 10/30/19)
- Complaint No. 18-211, In re Thomas L. Clyce (Final Order 02/10/21)
- Complaint No. 18-168, In re Dustin Daniels (Final Order 04/21/21)
- Complaint No. 20-124, In re Francis David Bourrie (Final Order 06/09/21)
- Complaint No. 19-192, In re Marilyn D. Sconions (07/28/21)
- Complaint No. 20-125, In re Muhammad Amin (Final Order 10-27-21)
- Complaint No. 21-077, In re Reginald Sessions (Final Order 10-27-21)
- Complaint No. 18-020, In re Joseph Kilsheimer (Final Order 1-26-22)
- Complaint No. 21-162, In re Cynthia Stuart (3-9-22)
- Complaint No. 21-113, In re Dennis Ward (4-27-22)
- Complaint No. 20-186, In re R.C. "Rick" Lussy (Final Order 6/8/2022)
- Complaint No. 17-082, In re Carlos Beruff (Final Order 7/27/2022)
- Complaint No. 20-100, In re David N. Tolces (Final Order 7/27/2022)
- Complaint No. 20-120, In re Randall Merritt (Final 9/9/2022)
- Complaint No. 20-165, 20-184 (cons), In re Omari Hardy (Final Order 9/9/2022)
- Complaint No. 22-006, In re MaryBeth Henderson (Final Order 9/9/2022)
- Complaint No. 20-060,
 - 20-073, 20-103(Cons.), In re Douglas Underhill (Final Order 10/26/2022) *on appeal
- Complaint No. 21-204, In re Rodney J. Braden (Final Order 10/26/2022)
- Complaint No. 21-039 to 052, 21-057, 21-060, & 21-064 (Cons), In re Vanessa Baugh (2/1/2023)
- Complaint No. 22-146, In re Jennie Blackburn (Final Order 4/26/23)
- Complaint Nos. 19-100 to 19-120 (Cons.), In re Melody Jurado (Final Order 6/14/23)
- Complaint No. 22-024, In re John Capps (Final Order 6/14/23)
- Complaint No. 22-205, In re John Polinsky (Final Order 8/2/23)
- Complaint No. 15-085, In re Colleen Reilly (Final Order 9/13/2023)
- Complaint No. 21-229, In re Eddie Martinez (Final Order 9/13/2023)
- Complaint No. 22-065, In re Oren Miller (Final Order 9/13/2023)
- Complaint No. 23-108, Leslie Ricciardelli, (Final Order 10/25/23)
- Complaint No. 22-163, William Oppenheimer (Final Order 10/25/23)
- Complaint No. 22-164, Heather Post (Final Order 10/25/23)
- Complaint No. 18-203, In re Christine Roberts (Final Order 12/6/2023)
- Complaint No. 22-027, In re Ernesto Torres (Final Order 12/6/2023)
- Complaint No. 19-007, In re Frank Kruppenbacher (Final Order 1/31/24)

Complaint No. 23-016, In re Aneala Beachum (Final Order 1/31/24)
Complaint No. 23-094, In re David Law (Final Order 1/31/24)
Complaint No. 21-101, In re Brian Mulligan (Final Order 3/13/24)
Complaint No. 22-178 & 185, In re Stephanie Busin (Final Order 3/13/24)
Complaint No. 21-238, In re Mark Cagni (Final Order 3/13/24)
Complaint No. 22-012, In re Angela Hough (Final Order 3/13/24)
Complaint No. 23-168, In re Henry Rosenthal (Final Order 4/19/2024)
Complaint No. 23-200, In re Michael Cusack (Final Order 4/19/2024)
Complaint No. 23-221, In re Ken Mascara (Final Order 7/31/2024)

HOUSE

Complaint No. 18-026, In re Kim Daniels (Final Order 1/30/2019)
Complaint No. 20-206, In re Jackie Toledo (Final Order 10/27/2021)
Complaint No. 20-211, In re Tracie Davis (Final Order 10/27/2021)
Complaint No. 21-159, In re Tracie Davis (Final Order 6/8/2022)

SENATE

Complaint No. 18-090, In re Daphne Campbell (Final Order 3/9/2022)

PENDING ACTION ON STATUTORILY-GENERATED LOBBYING FIRM AUDIT MATTERS (GOVERNOR AND CABINET)

Complaint No. 16-017, In re Dean Mead (Probable Cause 01/27/17)
Complaint No. 16-018, In re Buigas and Associates (Probable Cause 01/27/17)
Complaint No. 16-019, In re DDarling Consulting (Probable Cause 01/27/17).
Complaint No. 16-174, In re Kathy Till and Associates, Inc., (Probable Cause 08/02/17)
Complaint No. 16-170, In re Capitol Group, Inc., (Probable Cause 10/25/17)
Complaint No. 16-173, In re Johnson Strategies, LLC (Probable Cause 12/13/17)
Complaint No. 16-175, In re Sayfie Law Firm (Probable Cause 10/25/17)
Complaint No. 17-132, In re Andrew J. Liles (Probable Cause 08/01/18)
Complaint No. 17-134, In re Lester Abberger (Probable Cause 08/01/18)
Complaint No. 17-135, In re Pruitt and Associates (Probable Cause 08/01/18)
Complaint No. 17-136, In re Wilson and Associates, LLC (Probable Cause 08/01/18)
Complaint No. 17-137, In re TC Wolfe (Probable Cause 08/01/18)
Complaint No. 19-031, In re Impact GR (Probable Cause 09/18/19)
Complaint No. 20-055, In re All Florida Solutions, Inc. (Probable Cause 03/10/21)
Complaint No. 20-056, In re Carr Allison (Probable Cause 03/10/21)
Complaint No. 20-058, In re Pyle and Associates (Probable Cause 03/10/21)
Complaint No. 21-127, In re Diana Hadi Padgett (Probable Cause 12/3/21)
Complaint No. 21-128, In re CJT Strategies, LLC (Probable Cause 12/3/21)
Complaint No. 22-074, In re Capitol Strategy Group (12/2/22)
Complaint No. 22-075, In re Buchanan, Ingersoll, and Rooney (12/2/22)