FLORIDA
COMMISSION ON ETHICS
APR 25 2023
RECEIVED

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: John Capps,

Respondent.
_____/

Complaint No.: 22-024

MOTION TO SCHEDULE MATTER, ADOPT ALJ'S FINDINGS, RECOMMEND PENALTY, AND RENDER FINAL ORDER

COMES NOW, Advocate for the Commission on Ethics (Commission), requests the Commission schedule this matter at its earliest convenience, adopt the findings of the Administrative Law Judge (ALJ), find ethics violations, recommend the statutory penalties, and render a final order in this matter, and as good grounds states as follows:

1. On October 26, 2022, the Commission rendered its Order finding "probable cause to believe the Respondent, who served as an Orange County Firefighter, violated Section 112.313(6), Florida Statutes, by using or attempting to use his position and/or public property or public resources to secure a special privilege, benefit, or exemption for himself."

2. On February 14, 2022, the Commission's Clerk forwarded the matter to the Division of Administrative Hearings (DOAH) for assignment of an ALJ to hold a hearing and issue a recommended order.

3. The hearing by Zoom Conference was scheduled for April 17, 2023.

4. On February 16, 2023, Advocate served on Respondent a First Request for Admissions, First Set of Interrogatories, and Request for Production of Documents.

5. Respondent declined to participate in any discovery. Therefore, on March 28, 2023, Advocate filed a "Motion to Deem Matters Admitted and to Relinquish Jurisdiction Pursuant to Section 120.57(1)(i), Florida Statutes" (Motion). Please see Exhibit A.

6. On April 5, 2023, the ALJ issued its Order to Show Cause ordering that: 1) she reserves ruling on Advocate's Motion; 2) on or before 5:00 p.m., on April 10, 2023, Respondent shall fully respond to Advocate's First Request for Admissions and file a Notice of Compliance with a copy to DOAH with responses to be filed with, i.e. received by, Advocate and DOAH by that date and time.

7. Respondent filed no response to the Order to Show Cause. On April 14, 2023, the ALJ issued its Order finding good cause having been shown, and being fully advised in the matter, deemed admitted Advocate's First Request for Admissions and relinquished jurisdiction to the Commission on Ethics. Please see Exhibit B.

8. The requests for admissions are dispositive of the issues in this case.

9. The admissions fully and completely set forth Advocate's prima facie case, both factually and legally, evidencing:

> Respondent violated Section 112.313(6), Florida Statutes, by using or attempting to use his position and/or public property or public resources to secure a special privilege, benefit, or exemption for himself.

10. The Commission <u>may</u> conduct a proceeding pursuant to Section 120.57(2), <u>if appropriate</u>, but the parties may not raise any issues of disputed fact that could have been raised before the ALJ. Advocate asserts that a hearing pursuant to Section 112.57(2) is not warranted because the ALJ's April 14, 2023, Order resolved all issues of fact and conclusions of law.

PENALTY

11. Penalties were not recommended by the ALJ and, pursuant to Section 120.57(1)(i), the ALJ's Order Relinquishing Jurisdiction to the Commission need not contain a penalty.

12. Therefore, Advocate recommends the following penalties: $5,000 civil penalty,[1] $195.21 as restitution to the Orange County Government,[2] and public censure and reprimand.

WHEREFORE, for the stated reasons, Advocate respectfully requests the following relief:

a. This matter be placed on the Commission's meeting agenda as soon as the matter can be heard;

b. The Commission find that a proceeding pursuant to Section 120.57(2), Florida Statutes, is not necessary or appropriate because there are no disputed issues of fact and the conclusions of law have been admitted;

c. The Commission adopt the ALJ's April 14, 2023, "Order Relinquishing Jurisdiction and Closing File;"

d. The Commission find a violation each of Section 112.313(6), Florida Statutes;

e. The Commission incorporate said Order adopting the ALJ's findings of fact and conclusions of law in its Final Order; and

f. The Commission enter a Final Order recommending public censure and reprimand, a civil penalty of $5,000, and $195.21 in restitution to the Orange County Rescue Department for Respondent's violation pursuant to Section 112.324(3), Florida Statutes.

---

[1] The penalty may include "[r]estitution of any pecuniary benefits received because of the violations committed. The Commission may recommend that the restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund." § 112.317(d)3., Fla. Stat.

[2] Respondent was overpaid $195.21 due to the inaccurate work times that he verified on his timesheet.

RESPECTFULLY SUBMITTED on the 25th day of April, 2023.

MELODY A. HADLEY
Advocate for the Florida Commission on Ethics
Florida Bar No. 0636045
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300, Ext. 3704
Fax: (850) 488-4872
melody.hadley@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion was sent to John Capps, 1551 12th Street, Orange City, FL 32763, jmcapps2002@yahoo.com, via e-mail only, this 25th day of April, 2023.

MELODY A. HADLEY

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: John Capps,

Respondent.
_____/

DOAH Case No.: 23-600EC
Complaint No.: 22-024

MOTION TO DEEM MATTERS ADMITTED AND TO RELINQUISH JURISDICTION PURSUANT TO SECTION 120.57(1)(i), FLORIDA STATUTES

COMES NOW, Advocate for the Commission on Ethics (Advocate), pursuant to Rule 28-106.204, *Florida Administrative Code*, and Rule 1.370, Florida Rule of Civil Procedure, moves this Honorable Court for an entry of an Order Deeming Matters Admitted and Relinquishing Jurisdiction to the Commission on Ethics, and as good grounds states:

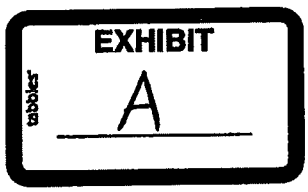
STATEMENT OF FACTS

1. In May 2004, John Capps (Respondent) began serving as an Orange County Firefighter with the Orange County Rescue Department (Department).

2. In December 2020, Respondent was suspended for 16 hours without pay due to concerns related to time and attendance issues covering four days in November 2020.

3. As a non-exempt employee, Respondent was required to use the biometric Kronos device to clock in and clock out during the beginning and end of his work shift, as well as during lunch periods. If the employee forgot to use the Kronos device, then the employee's supervisor is required to manually enter the employee's arrival time on the employee's timecard.

4. On December 17, 2020, Respondent's scheduled arrival time was 10:30 a.m. Respondent did not use the Kronos device when he arrived and reported an arrival time of 12:00 p.m. to his supervisor, Lt. Pamela Byrne, which was 1.5 hours late. Based on Respondent's representation, Lt. Byrne inputted 12:00 p.m. as Respondent's arrival time. However, a review



of the Department's cameras reveals that Respondent did not arrive at the Department's rear doors until 1:06 p.m. and did not take his work assignment position until 1:08 p.m.

5. On December 18, 2020, Respondent's scheduled arrival time was 10:30 a.m. Respondent did not use the Kronos device when he arrived and reported an arrival time of 10:30 a.m. to Battalion Chief Nichol Stratman, Supervisor of the Department's Central Staffing Unit. Based on Respondent's representation, Chief Stratman inputted 10:30 a.m. as Respondent's arrival time. However, a review of the Department's cameras reveals that Respondent did not arrive at the Department's rear doors until 11:08 a.m. and did not take his work assignment position until 11:41 a.m.

6. On December 21, 2020, Respondent's scheduled arrival time was 10:30 a.m. Respondent did not use the Kronos device when he arrived and reported an arrival time of 10:30 a.m. to Chief Stratman. Based on Respondent's representation, Chief Stratman inputted 10:30 a.m. as Respondent's arrival time. However, a review of the Department's cameras reveals that Respondent did not arrive at the Department's rear doors until 10:47 a.m. and did not take his work assignment position until 11:16 a.m.

7. On December 23, 2020, Respondent accessed his timecard which included the times input by Lt. Byrnes and Chief Stratman on December 17, 18, and 21, respectively. Respondent approved that timecard attesting to those misreported times as being accurate.

8. In January 2021, the Department began another investigation into Respondent related to alleged timecard fraud which was initiated by concerns with Respondent's failure to adhere to the Department's timecard procedure in December 2020.

9. The Department's investigation determined that Respondent violated numerous Department Rules and Procedures including Reporting to Duty; Truthfulness; Unbecoming

Conduct; Falsifying Reports; Kronos Procedures; and an article of the Orange County Firefighters Association Local 2057 entitled, "Work Day and Work Week for 40 Hour Employees."

10. Furthermore, Complainant, Fire Chief David Hepker, contends that Respondent intentionally did not clock in to start his shift on the dates in question because he had previously been disciplined for time and attendance issues and knew the late arrivals would lead to further discipline.

PROCEDURAL HISTORY

11. On October 26, 2022, the Commission on Ethics (Commission) rendered its Order Finding Probable Cause to believe that Respondent, who served as an Orange County Firefighter, violated Section 112.313(6), Florida Statutes, by using or attempting to use his position and/or public property or public resources to secure a special privilege, benefit, or exemption for himself. A copy of the Order is attached as "Exhibit 1" and incorporated herein by reference.

12. The matter was forwarded to the Division of Administrative Hearings (DOAH) for an administrative hearing, pursuant to Section 120.57(1), Florida Statutes, and the parties were authorized to conduct discovery. Fla. Admin. Code R. 28-106.206; Initial Order, dated February 16, 2023.

13. On February 16, 2023, the Advocate served by email on Respondent the Advocate's Request for Admissions with Exhibits, Advocate's First Set of Interrogatories, and Advocate's First Request for Production of Documents in accordance with Rules 1.370, 1.340, and 1.350, Florida Rules of Civil Procedure. A copy of the discovery requests is attached as "Exhibits 2, 3, & 4" and incorporated herein by reference.

14. Pursuant to Rules 1.340(a), 1.350(b), and 1.370(a), Florida Rules of Civil Procedure, Respondent was advised to respond to the discovery requests within thirty (30) days. Respondent was specifically informed that failure to respond to the Request for Admissions within 30 days after service of the request would result in the matter being admitted, pursuant to Rule 1.370, Florida Rules of Civil Procedure. Additionally, a copy of the rule was provided to Respondent.

15. Pursuant to Rule 28-106.103, *Florida Administrative Code*, no additional time shall be added if service is made by email.

16. Accordingly, Respondent was required to respond to the discovery requests on or before Monday, March 18, 2023. As evidenced by the attached emails, the Advocate reminded Respondent of the due date to file his answers on several occasions. A copy of the emails is attached as "Exhibit 5" and incorporated herein by reference.

17. Respondent has not filed a response, has not requested a continuance, or taken any affirmative action to respond to the Advocate's discovery requests. While Respondent, using the email address "jmcapps2002@yahoo.com," corresponded with Advocate via email before the matter was forwarded to DOAH and with preparing the "Joint Response to Initial Order" filed on February 23, 2023, Respondent has never responded to the Advocate's messages regarding the discovery requests.

18. This matter is currently set for final hearing by Zoom Conference on April 17, 2023 at 9:30 a.m.

ARGUMENT

The Matters Asserted in the Advocate's Request for Admission Are Deemed Admitted and Jurisdiction of this Matter Should be Relinquished to the Commission on Ethics Because No Disputed Issues of Material Fact Exist

A. The Request for Admissions Must be Deemed Admitted as a Matter of Law

Pursuant to Rule 1.370(a), Florida Rules of Civil Procedure, if a party does not respond to a request for admissions within thirty days after service of the request or such shorter or longer time as the court may allow, the matter shall be deemed admitted. *The Florida Bar v. Eubanks*, 752 So.2d 540, 544 (Fla. 1999); *Florida Dep't of Financial Services v. Tampa Service Co.*, 884 So. 2d 252, 253 (Fla. 1st DCA 2004); *Singer v. Nationwide Mut. Fire Ins. Co.*, 512 So.2d 1125, 1126 (Fla. 4th DCA 1987).

Over 37 days have passed since the Advocate served its discovery requests upon Respondent, and Respondent has neither answered nor objected to the Request for Admissions. Therefore, the matters asserted in the Advocate's Request for Admissions are deemed admitted by operation of Rule 1.370(a), Florida Rules of Civil Procedure.

B. The Request for Admissions Have Been Deemed Admitted and are Conclusively Established as a Matter of Law.

Pursuant to Rule 1.370(b), Florida Rules of Civil Procedure, any matter that has been admitted shall be considered conclusively established. By deeming the Request for Admissions contained in the Advocate's discovery requests admitted, the truth of the matters contained therein are conclusively established.

Due to Respondent's failure to respond to the Advocate's Request for Admissions, Respondent has admitted the following, which have been established as matters of fact:

1. Respondent was employed as an Orange County firefighter between 2004 through 2021. (Admissions # 1)

2. By virtue of Respondent's position as an employee of Orange County, he is subject to Article II, Section 8, Florida Constitution, and the requirements of Part III, Chapter 112, Florida Statutes, Code of Ethics. (Admission # 2)

3. Respondent was suspended without pay for time and attendance offenses occurring on the dates November 2, 3, 5, and 6, 2020 as reflected in "Exhibit A" within Exhibit 2. (Admission # 3)

4. During November 2020 and December 2020, Respondent was required to use the biometric Kronos device to clock in and clock out during the beginning and end of his work shift, as well as during lunch periods. (Admission # 4)

5. When Respondent did not use the Kronos device, his supervisor was required to manually enter his arrival time on his timecard. (Admission # 5)

6. Respondent's assigned reporting time to Fire Rescue Headquarters on December 17, 2020 was 10:30 a.m. (Admissions # 6)

7. Respondent reported an arrival time of 12:00 p.m. to a supervisor, Lt. Pamela Byrne, when he actually arrived[1] at 1:06 p.m. on December 17, 2020 as reflected in "Exhibit B" within Exhibit 2. (Admissions #7)

8. Respondent did not take his work assignment position until 1:08 p.m. on December 17, 2020 as reflected in "Exhibit C" within Exhibit 2. (Admission # 8)

9. When Respondent informed Lt. Pamela Byrne of his arrival time of 12:00 p.m. on December 17, 2020, he provided an inaccurate time. (Admission # 9)

---

[1] Arrived means entering the door at Headquarters.

10. Respondent's assigned reporting time to Fire Rescue Headquarters on December 18, 2020 was 10:30 a.m. (Admission # 10)

11. Respondent reported an arrival time of 10:30 a.m. to supervisor, Battalion Chief Nichol Stratman, when he actually arrived[2] at 11:08 a.m. on December 18, 2020 as reflected in "Exhibit D" within Exhibit 2. (Admission #11)

12. Respondent did not take his work assignment position until 11:41 a.m. on December 18, 2020 as reflected in "Exhibit E" within Exhibit 2. (Admission #12)

13. When Respondent informed Battalion Chief Nichol Stratman of his arrival time of 10:30 a.m. on December 18, 2020, he provided an inaccurate time. (Admission #13)

14. Respondent's assigned reporting time to Fire Rescue Headquarters on December 21, 2020 was 10:30 a.m. (Admission #14)

15. Respondent reported an arrival time of 10:30 a.m. to supervisor, Battalion Chief Nichol Stratman, when he actually arrived[3] at 10:47 a.m. on December 21, 2020 as reflected in "Exhibit F" within Exhibit 2. (Admission #15)

16. Respondent did not take his work assignment position until 11:16 a.m. on December 21, 2020 as reflected in "Exhibit G" within Exhibit 2. (Admission #16)

17. When Respondent informed Battalion Chief Nichol Stratman of his arrival time of 10:30 a.m. on December 21, 2020, he provided an inaccurate time. (Admission #17)

18. On December 23, 2020, Respondent accessed his timecard which included the time inputted by Lt. Byrnes and Chief Stratman on December 17, 18, and 21, respectively. Respondent approved that timecard, attesting to those misreported times as being accurate. (Admissions #18, 19)

---

[2] Arrived means entering the door at Headquarters.
[3] Arrived means entering the door at Headquarters.

19. Respondent also provided inaccurate arrival times on other dates. (Admission #20)

20. Respondent's actions relative to misrepresenting his arrival time(s) resulted in his violation of Orange County Fire Rescue Department Rules and Procedures, including, Reporting to Duty; Truthfulness; Unbecoming Conduct; Falsifying Reports; Kronos Procedures; and an article of the Orange County Firefighters Association Local 2057 entitled, "Work Day and Work Week for 40 Hour Employees." (Admission #21)

21. Respondent intentionally did not use the Kronos device to clock in due to his tardiness on December 17, 18, and 21, 2020. (Admission #22)

22. Respondent's intent in reporting inaccurate arrival time(s) was an attempt to avoid further disciplinary action for additional time and attendance offenses to secure the benefit of continued employment. (Admission #23)

23. Respondent was overpaid $195.21 due to the inaccurate work times that he verified on his timesheet as reflected in "Exhibit H" within Exhibit 2. (Admission #24)

24. Respondent did not provide a reimbursement of $195.21 to Orange County. (Admission #25)

25. Respondent was terminated from his employment as an Orange County firefighter in March 2021 for time and attendance offenses as reflected in "Exhibit I" within Exhibit 2. (Admission #26)

26. Respondent violated Section 112.313(6), Florida Statutes, by using or attempting to use his position and/or public property or public resources to secure a special privilege, benefit, or exemption for himself. (Admission #27)

C. **No Disputes of Material Fact Exist Because the Advocate Has Conclusively Established Its Prima Facie Case.**

In order to prevail, the Advocate must demonstrate by clear and convincing evidence that Respondent was required to comply with the applicable statutes and that Respondent failed to meet the requirements. *Dep't of Banking & Finance v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292, 294 (Fla. 1987).

D. **Respondent was required to comply with Chapter 112, Part III, Florida Statutes, while serving as a public employee**

At all times relevant herein, Respondent was a public employee and was bound by the Florida Constitution and the Florida Code of Ethics. Pursuant to Section 112.313(6), "No public ...employee of an agency . . . shall corruptly use or attempt to use his . . . official position . . . to secure a special privilege, benefit, or exemptions for himself. . . ." The basic principle underlying the Ethics Act is that those in public service must use their positions for the public's benefit and not for their own private gain.

E. **The Administrative Law Judge Should Relinquish Jurisdiction of this Matter to the Commission on Ethics.**

An Administrative Law Judge is required to render an order relinquishing jurisdiction to the agency if no genuine issue of material fact exists. §120.57(1)(i), Fla. Stat. Based on the facts that are deemed admitted, the Advocate has conclusively shown that Respondent violated Section 112.313(6), Florida Statutes, by using or attempting to use his position and/or public property or public resources to secure a special privilege, benefit, or exemption for himself.

WHEREFORE, the Advocate respectfully requests that its motion be granted and moves that the Honorable Administrative Law Judge to issue an Order as follows:

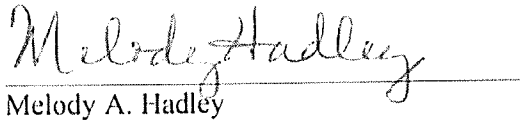
a. Deeming Matters Admitted pursuant to Rule 1.370(a), Florida Rules of Civil Procedure; and
b. Relinquishing Jurisdiction to the Commission on Ethics pursuant to section 120.57(1)(i), Florida Statutes, for rendition of a Final Order.

RESPECTFULLY SUBMITTED on the 28th day of March, 2023.

MELODY A. HADLEY
Advocate for the Florida Commission on Ethics
Florida Bar No. 0636045
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300, Ext. 3704
Fax: (850) 488-4872
melody.hadley@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion was sent to John Capps, 1551 12th Street, Orange City, FL 32763, jmcapps2002@yahoo.com, via e-mail only, this 28th day of March, 2023.



Melody A. Hadley

DATE FILED

OCT 26 2022

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re JOHN CAPPS,)
)
Respondent.)
)

Complaint No. 22-024

ORDER FINDING PROBABLE CAUSE

Based on the preliminary investigation of this complaint and on the recommendation of the Commission's Advocate, the Commission on Ethics finds that there is probable cause to believe the Respondent, who served as an Orange County Firefighter, violated Section 112.313(6), Florida Statutes, by using or attempting to use his position and/or public property or public resources to secure a special privilege, benefit, or exemption for himself.

Therefore, the Commission on Ethics orders a public hearing as to whether the Respondent violated Section 112.313(6), Florida Statutes, as set forth above. A formal notice of hearing of the matter on which probable cause has been found will be prepared and sent to the Respondent and to the Advocate. Under Commission Rule 34-5.020, F.A.C., the Commission may resolve a complaint proceeding through a stipulation, settlement, or consent order entered into by the Respondent and the Commission's Advocate and approved by the Commission. If the Respondent wishes to pursue a settlement of this case, he should contact the Commission's Advocate at (850) 414-3300 to discuss the terms of a possible settlement.

EXHIBIT

1

ORDERED by the State of Florida Commission on Ethics meeting in executive session

On Friday, October 21, 2022.

October 26, 2022
Date

John Grant
Chair, Florida Commission on Ethics

cc: Mr. John Capps, Respondent
Ms. Melody A. Hadley, Commission Advocate
Mr. David A. Hepker, Complainant

JG/gps

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: John Capps,

Respondent.

DOAH Case No.: 23-600EC
Complaint No.: 22-024

_____/

ADVOCATE'S REQUEST FOR ADMISSIONS

The Advocate for the Florida Commission on Ethics requests, pursuant to Rule 1.370(a), Florida Rules of Civil Procedure, John Capps, Respondent in this cause, to make, within thirty (30) days, the following admissions.[1]

ADMIT that each of the following statements is true:

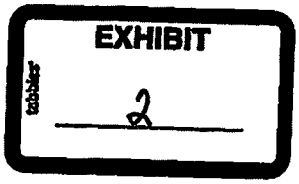
1. **ADMIT that you were employed as an Orange County firefighter between 2004 through 2021.**

2. **ADMIT that by virtue of your position as an employee of Orange County, you are subject to Article II, Section 8, Florida Constitution, and the requirements of Part III, Chapter 112, Florida Statutes, Code of Ethics.**

3. **ADMIT that you were suspended without pay for time and attendance offenses occurring on the dates November 2, 3, 5, and 6, 2020 as reflected in Exhibit A.**

4. **ADMIT that during November 2020 and December 2020, you were required to use the biometric Kronos device to clock in and clock out during the beginning and end of your work shift, as well as during lunch periods.**

[1] **PLEASE TAKE NOTICE: Rule 1.370, Florida Rules of Civil Procedure, provides that "[t]he matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter within 30 days after service of the request. . . ." A copy of Rule 1.370, Florida Rules of Civil Procedure, is attached hereto as an Attachment.**



5. **ADMIT that if you did not use the Kronos device, then your supervisor was required to manually enter your arrival time on your timecard.**

6. **ADMIT that your assigned reporting time to Fire Rescue Headquarters on December 17, 2020 was 10:30 a.m.**

7. **ADMIT that you reported an arrival time of 12:00 p.m. to a supervisor, Lt. Pamela Byrne, when you actually arrived[2] at 1:06 p.m. on December 17, 2020 as reflected in Exhibit B.**

8. **ADMIT that you did not take your work assignment position until 1:08 p.m. on December 17, 2020 as reflected in Exhibit C.**

9. **ADMIT that when you informed Lt. Pamela Byrne of your arrival time as reflected in Admission Seven, you provided an inaccurate time.**

10. **ADMIT that your assigned reporting time to Fire Rescue Headquarters on December 18, 2020 was 10:30 a.m.**

11. **ADMIT that you reported an arrival time of 10:30 a.m. to a supervisor, Battalion Chief Nichol Stratman, when you actually arrived[3] at 11:08 a.m. on December 18, 2020 as reflected in Exhibit D.**

12. **ADMIT that you did not take your work assignment position until 11:41 a.m. on December 18, 2020 as reflected in Exhibit E.**

13. **ADMIT that when you informed Battalion Chief Nichol Stratman of your arrival time as reflected in Admission Eleven, you provided an inaccurate time.**

14. **ADMIT that your assigned reporting time to Fire Rescue Headquarters on December 21, 2020 was 10:30 a.m.**

---

[2] Arrived means entering the door at Headquarters.
[3] Arrived means entering the door at Headquarters.

15. **ADMIT that you reported an arrival time of 10:30 a.m. to a supervisor, Battalion Chief Nichol Stratman, when you actually arrived[4] at 10:47 a.m. on December 21, 2020 as reflected in Exhibit F.**

16. **ADMIT that you did not take your work assignment position until 11:16 a.m. on December 21, 2020 as reflected in Exhibit G.**

17. **ADMIT that when you informed Battalion Chief Nichol Stratman of your arrival time as reflected in Admission Fifteen, you provided an inaccurate time.**

18. **ADMIT that on December 23, 2020, you accessed your timecard which included the time inputted by Lt. Byrnes and Chief Stratman on December 17, 18, and 21, respectively.**

19. **ADMIT that you approved that timecard, noted in Allegation Eighteen, attesting to those misreported times as being accurate.**

20. **ADMIT that you also provided inaccurate arrival times on other dates.**

21. **ADMIT that your actions relative to misrepresenting your arrival time(s) resulted in you violating Orange County Fire Rescue Department Rules and Procedures, including, Reporting to Duty; Truthfulness; Unbecoming Conduct; Falsifying Reports; Kronos Procedures; and an article of the Orange County Firefighters Association Local 2057 entitled, "Work Day and Work Week for 40 Hour Employees."**

22. **ADMIT that you intentionally did not use the Kronos device to clock in due to your tardiness on December 17, 18, and 21, 2020.**

23. **ADMIT that your intent in reporting inaccurate arrival time(s) was an attempt to avoid further disciplinary action for additional time and attendance offenses to secure the benefit of continued employment.**

24. **ADMIT that you were overpaid $195.21 due to the inaccurate work times that you verified on your timesheet as reflected in Exhibit H.**

---

[4] Arrived means entering the door at Headquarters.

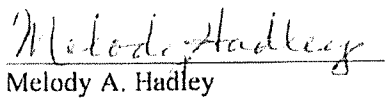
25. **ADMIT that you did not provide reimbursement of $195.21 to Orange County.**

26. **ADMIT that you were terminated from your employment as an Orange County firefighter in March 2021 for time and attendance offenses as reflected in Exhibit I.**

27. **ADMIT that you violated Section 112.313(6), Florida Statutes, by using or attempting to use your position and/or public property or public resources to secure a special privilege, benefit, or exemption for yourself.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the forgoing was sent to John Capps, 1551 12th Street, Orange City, FL 32763, jmcapps2002@yahoo.com, via e-mail only, this 16th day of February, 2023.



Melody A. Hadley

Rule 1.370. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court the request may be served upon the plaintiff after commencement of the action and upon any other party with or after service of the process and initial pleading upon that party. The request for admission shall not exceed 30 requests, including all subparts, unless the court permits a larger number on motion and notice and for good cause, or the parties propounding and responding to the requests stipulate to a larger number. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter within 30 days after service of the request or such shorter or longer time as the court may allow but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the process and initial pleading upon the defendant. If objection is made, the reasons shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless that party states that that party has made reasonable inquiry and that the information known or readily obtainable by that party is insufficient to enable that party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not object to the request on that ground alone; the party may deny the matter or set forth reasons why the party cannot admit or deny it, subject to rule 1.380(c). The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. Instead of these orders the court may determine that final disposition of the request be made at a pretrial conference or at a designated time before trial. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to rule 1.200 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved by it and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against that party in any other proceeding.

ATTACHMENT
To Admissions
IN RE: JOHN CAPPS

Exhibit B.1

ORANGE COUNTY FIRE RESCUE DEPARTMENT
Operations – EMS Section
James Bates, Assistant Chief
P.O. Box 5879
Winter Park, Florida 32793-5879
407-836-9031 Fax: 407-836-9138
James.Bates@ocfl.net

Received: 1233 Date: 12/4/20
Delivered: Date: 12/04/2020

December 4, 2020

John Capps, Firefighter
6590 Amory Court
Winter Park, FL 32792

Re: **Predetermination Hearing Decision**

Dear Firefighter Capps,

A Predetermination Hearing (PDH) was held on November 19, 2020 related to your failure to be present for your scheduled work assignment and your failure to obtain supervisory approval for any absence or deviation of your schedule. During the PDH, the following personnel were present: James Bates- Assistant Chief, Charles Welch- Human Resources, Battalion Chief Renee Stone, Doug Cooper- Local 2057 and yourself.

I have carefully reviewed all written documentation, audio recordings, and oral testimonies presented during the hearing and have made the following conclusions and determinations:

- You acknowledged that you had received an email from Captain Bryant Smith referencing "Light Duty expectations/Leave Form"
- On November 2, 2020 you were scheduled to work from 1030-1930. Kronos confirmed that you did not clock in until 1413.
- On November 3, 2020 you were scheduled to work from 0800-1700. Kronos confirmed that you were a no show.
- On November 5, 2020 you were scheduled to work from 1030-1930. Kronos confirmed that you did not clock in until 1342.
- On November 6, 2020 you were scheduled to work from 0800-1700. Kronos confirmed that you were a no show.
- On November 5, 2020 you were scheduled to work from 1030-1930. Kronos confirmed that you did not clock in until 1218.
- You admitted that on the days you were late you made no attempt to contact a supervisor to advise them of your tardiness.
- You stated that you had sent a text message to Lieutenant Pam Byrne that you needed a sick day on November 3 and November 6. However,

EXHIBIT A

you failed to follow up when you received no confirmation that your message was received. You failed to call in according to the policy.
    - In addition, you have not provided any documentation that would support your claim about sending a text message.
- You admitted that you were in violation of Orange County Fire Rescue Department Procedures, SOP 030; Sick Leave
- You admitted that you were in violation of Orange County Fire Rescue Department Procedures, SOP 039; Kronos Procedures
- You admitted that you were in violation of Orange County Fire Rescue Department Rules, R.5; Performance of Duty
- You admitted that you were in violation of Orange County Fire Rescue Department Rules, R.19; Reporting to Duty

Based on the information listed above and the testimony provided, there is a preponderance of evidence to indicate your actions in the above referenced matter violated the following:

- Orange County Fire Rescue Department SOP 002 Mission Statement, Leadership Values and Principles, and Motto
- Orange County Fire Rescue Department SOP 030 Sick Leave
- Orange County Fire Rescue Department Standard Operating Procedures, SOP 039; Kronos Procedures
- Orange County Fire Rescue Department Rules, R.5; Performance of Duty
- Orange County Fire Rescue Department Rules, R.19; Reporting to Duty
- Orange County Firefighters Association Local 2057, Article 41.01 WORK DAY AND WORK WEEK FOR 40 HOUR EMPLOYEES

I have reviewed these violations under the Orange County Fire Rescue Department Standard Operating Procedures: SOP 006 [*Corrective Disciplinary Action*], Orange County Policy Manual & Operational Regulations [*413 Disciplinary Action*], and Union Contract Article 25 [*Discipline and Discharge*] and I have determined your actions to be:

- Failure to follow established call in procedures A.3
- Habitual or excessive absence/tardiness for any reason A.5
- Less than 3 days – No call/no show or absence form work without approval A.7

After considering all information and testimony presented, reviewing policies that govern said violations, the seriousness of these offenses, Union Contract Article 25, your employment tenure, your disciplinary history, and reviewing actions taken in similar cases, it is my decision to impose the following upon receipt of this decision letter:

- **You will be suspended without pay for period of 16 hours.**
  - The scheduled date of suspension will be as follows –
    - December 7, 2020 – 8 hour suspension from 0800-1700
    - December 8, 2020 – 8 hours suspension from 0800-1700

Resources available to you:

- OCFRD Peer Support and Referral
  - Lt. Willis – CISM Team Coordinator (407) 836 – 9059

Employees are also encouraged to contact the County's EAP provider, ComPsych whenever they are experiencing personal and/or work related difficulties.

See below for more information on ComPsych®:

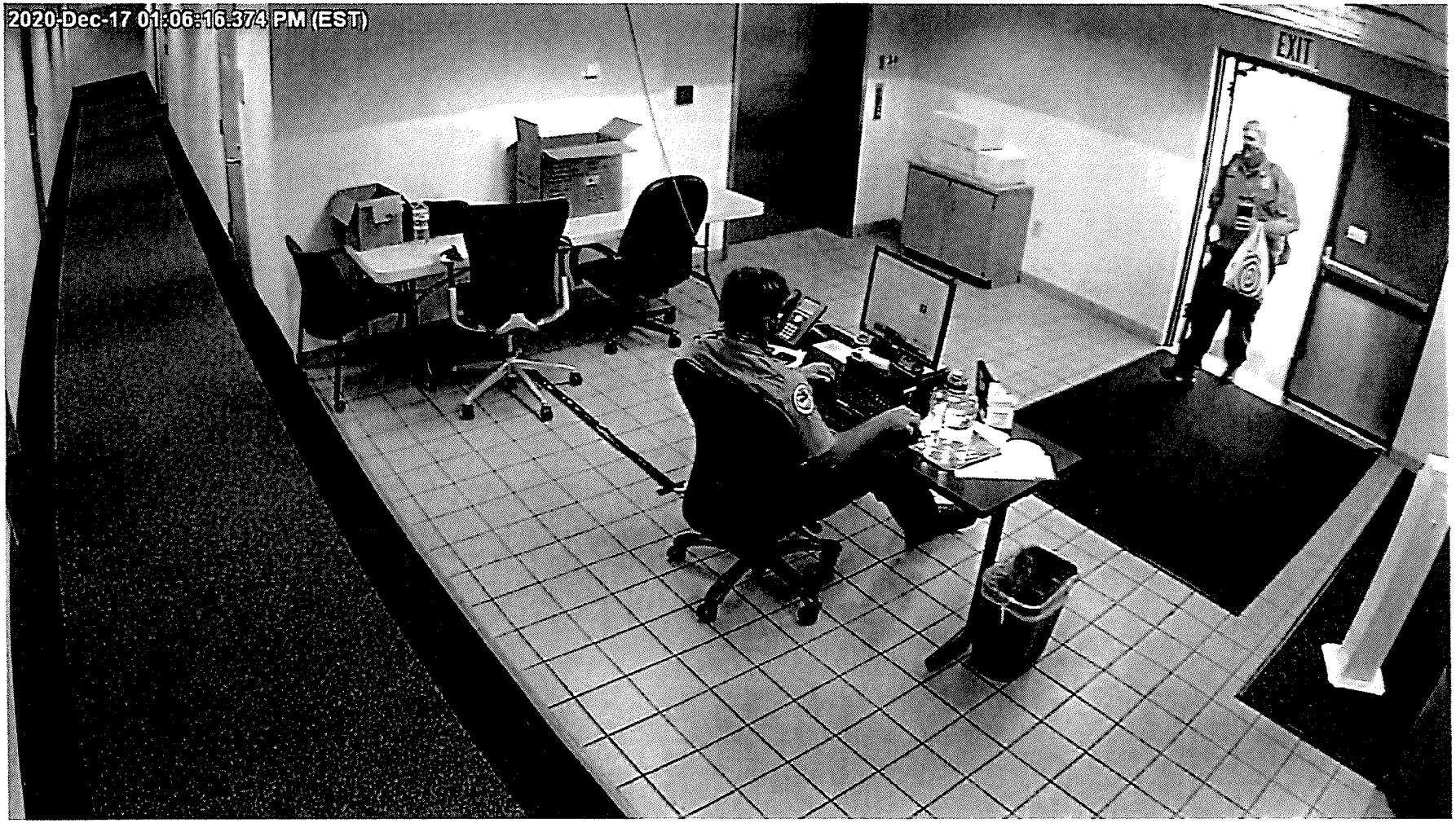
Employee Assistance Program (EAP)
ComPsych® Guidance Resources® Program
Call: 855.221.8925
TDD: 800.697.0353
Go Online: guidanceresources.com
Your company Web ID: ORANGECOUNTY

Should you not agree with this decision, you have the right to appeal in accordance with the Agreement between Orange County and the Orange County Firefighters Association, Local 2057, Article 17, Grievance and Arbitration Procedures.

Sincerely,

James Bates
Assistant Chief, Operations

c: James Fitzgerald, Fire Chief
Michael Wajda, Deputy Chief
Elizabeth Stone, Acting Assistant Chief
Charles Welch, Senior HR Advisor, HR
Andre Perez, President, IAFF Local 2057
Nichol Stratman, Battalion Chief, Centralized Staffing
Ricardo Daye, Director, Orange County Human Resources
Suzette Shields, Compliance & Employee Relations Administrator



EXHIBIT

B

EXHIBIT

tabbies

C

EXHIBIT

D

2020-Dec-10 11:41:42:722 AM (EST)

EXHIBIT
E
tabbies

EXHIBIT

tabbies

F

2020 Dec 21 11:16:51.539 AM (EST)

EXHIBIT
G
tabbies

FIRE RESCUE DEPARTMENT
DAVID A. HEPKER, Program Administrator
Post Office Box 5879
Winter Park Florida 32793
Telephone 407.836.9058 ♦ Fax: 407.836.9006
David.Hepker@ocfl.net

November 17, 2021

Certified: 9489009000276381635523

John Capps
1551 12th Street
Orange City, FL 32763

Dear Mr. Capps:

As you are aware, the Orange County Fire Rescue Department conducted an internal investigation #2021-0006 regarding your alleged time card fraud. The sustained findings in the investigation resulted in the termination of your employment.

Our Department has worked with the Orange County Comptroller's Office to determine the monetary value for the time that you claimed as work time when in fact you did not work. The total amount of overpayment to you was $195.21. I have attached the calculations for your review.

You will receive a separate invoice from Orange County Government for reimbursement of the $195.21. It is expected that you will remit the funds within the time limits specified on the invoice.

Should you fail to return the excess funds you received for fraudulent documentation on your time card, the Department will initiate a law enforcement report.

If you have any questions or concerns you may contact me at the telephone number below.

Respectfully,

David A. Hepker

David A. Hepker
Program Administrator
Fire Rescue Professional Standards
407-836-9058

Attachments:

CC: David Rathbun, Deputy Fire Chief
Alex Morales, Fiscal & Operations Support Manager

EXHIBIT
H
tabbies

ORANGE COUNTY FIRE RESCUE DEPARTMENT
Michael Howe, Assistant Chief, Training
P.O. Box 5879
Winter Park, Florida 32793-5879
(407) 836-6889 Fax (407) 836-9138
e-mail: Martis.mack@ocfl.net

Received: _____ Date: 3/20/21
Delivered: _____ Date: 3/20/21

March 19, 2021

John Capps, Firefighter 55/A
6590 Amory Court
Winter Park, FL 32792

Re: **Predetermination Hearing Decision**

Dear Firefighter Capps,

A Predetermination Hearing (PDH) was held on March 10, 2021 related to Investigation 2021-0006. During the PDH, the following personnel were present, Michael Howe-Assistant Chief, Martis Mack-Assistant Chief, Renee Stone-Battalion Chief, Brian Brink-Battalion Chief, Charles Welch-Human Resources, Paul Riccardi-Local 2057 and yourself.

I have carefully reviewed all written documentation, audio recordings, and oral testimonies presented during the hearing and have made the following conclusions and determinations:

- On December 17, 2020 you were scheduled to work from 1030-1930. You acknowledged that you purposely did not use the Kronos clock because you were late to work with an arrival time of 1306.
- On December 18, 2020 you were scheduled to work from 1030-1930. You acknowledged that you purposely did not use the Kronos clock because you were late to work with an arrival time of 1108.
- On December 21, 2020 you were scheduled to work from 1030-1930. You acknowledged that you purposely did not use the Kronos clock because you were late to work with an arrival time of 1047. In addition to being late you did not report to your work assignment until 1116.
- On December 23, 2020 you met with Chief Stratman to reconcile your Kronos. You acknowledged that you were untruthful with Chief Stratman causing her to input the wrong clock in times for December 17th, 18th, and 21st of 2020.
- On March 10, 2021 you acknowledged that you intentionally avoided using the Kronos clock allowing you to falsify your Kronos by having Chief Stratman and Lieutenant Byrne manually clock you in at your scheduled reporting time.
- You admitted that you were in violation of Orange County Fire Rescue Department Rules, R.19; Reporting to Duty.
- You admitted that you were in violation of Orange County Fire Rescue Department Rules, R23; Truthfulness.

EXHIBIT
I

- You admitted that you were in violation of Orange County Fire Rescue Department Rules, R24; Unbecoming Conduct.
- You admitted that you were in violation of Orange County Fire Rescue Department Rules, R26; Falsifying Reports.
- You admitted that you were in violation of Orange County Fire Rescue Department Procedures, SOP 039; Kronos Procedures

Based on the information listed above and the testimony provided, there is a preponderance of evidence to indicate your actions in the above referenced matter violated the following:

- Orange County Fire Rescue Department Rules, R.19; Reporting to Duty.
- Orange County Fire Rescue Department Rules, R23; Truthfulness.
- Orange County Fire Rescue Department Rules, R24; Unbecoming Conduct.
- Orange County Fire Rescue Department Rules, R26; Falsifying Reports.
- Orange County Fire Rescue Department Standard Operating Procedures, SOP 039; Kronos Procedures
- Orange County Firefighters Association Local 2057, Article 41.01 WORK DAY AND WORK WEEK FOR 40 HOUR EMPLOYEES

On November 19, 2020 a Predetermination Hearing (PDH) was held related to your failure to be present for your scheduled work assignment and your failure to obtain supervisory approval for any absence or deviation of your schedule. This resulted in a 16 hour suspension without pay

In addition management was made aware after your Predetermination Hearing that you were late to an overtime shift on March 9, 2021. This will be addressed if necessary with a subsequent PDH.

I have reviewed these violations under the Orange County Fire Rescue Department Standard Operating Procedures: SOP 006 [*Corrective Disciplinary Action*], Orange County Policy Manual & Operational Regulations [*413 Disciplinary Action*], and Union Contract Article 25 [*Discipline and Discharge*] and I have determined your actions to be:

- Habitual or excessive absence/tardiness for any reason A.5

- Conduct in a work or non-work status which discredits the County government, public officials, fellow employee(s), or themselves (e.g. viewing and or distributing pornographic material, stealing, dishonesty) C.7
- Non-compliance with policies, operational guidelines, procedures, orders, rules, or regulations D.20
- Willfully altering or falsifying a document or other County document, records, etc. E.9
- Time Card Fraud – willfully submitting an incorrect timecard with intent to defraud the County E.10

After considering all information and testimony presented, reviewing policies that govern said violations, the seriousness of these offenses, Union Contract Article 25, your employment tenure, your disciplinary history, and reviewing actions taken in similar cases, it is my decision to impose the following upon receipt of this decision letter:

- **Your employment with Orange County Fire Rescue will be terminated upon receipt of this letter**

- **You are directed to return all County/Department issued items in accordance with SOP 027, Separation Process to the Supply Bureau located at 400 S. Gaston Foster Road by March 26, 2021.**

Resources available to you:

- OCFRD Peer Support and Referral
  Lt. Willis – CISM Team Coordinator (407) 836 – 9059

You are also encouraged to contact the County's EAP provider, ComPsych whenever you are experiencing personal and/or work related difficulties. See below for more information on ComPsych:

Employee Assistance Program (EAP)
ComPsych Guidance Resources Program
Company ID: Orange County
Member Services: 1-855-221-8925
guidanceresources.com/groWeb/login/login.xhtml

Should you not agree with this decision, you have the right to appeal in accordance with the Agreement between Orange County and the Orange County Firefighters Association, Local 2057, Article 17, Grievance and Arbitration Procedures.

Sincerely,

Michael A. Howe
Assistant Chief, Training

c: James M. Fitzgerald, Fire Chief
David Rathbun, Deputy Chief
Mike Wajda, Division Chief, Operations
Martis Mack, Assistant Chief, A-Shift
Brian Brink, Battalion Chief, B3/A
David Hepker, Program Administrator
Charles Welch, Senior Human Resource Advisor
Ricardo Daye, Director, Orange County Human Resources
Andre Perez, President, IAFF Local 2057

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: John Capps,

Respondent.

DOAH Case No.: 23-600EC
Complaint No.: 22-024

ADVOCATE'S FIRST SET OF INTERROGATORIES TO RESPONDENT

The undersigned Advocate, on behalf of the Florida Commission on Ethics, propounds the following Interrogatories to Respondent, John Capps, ("Respondent") in accordance with Rule 28-106.206, Florida Administrative Code, and Rule 1.340, Florida Rules of Civil Procedure. **These Interrogatories must be answered in writing, signed under oath, and returned to Melody A. Hadley, Advocate for the Florida Commission on Ethics, Office of the Attorney General, PL-01, The Capitol, Tallahassee, FL 32399-1050, melody.hadley@myfloridalegal.com within thirty (30) days after service.**

In responding to these interrogatories, Respondent is requested to furnish all information within his personal knowledge and in addition, all information, including hearsay, in the possession of his attorneys, agents, investigators, employees, independent contractors, and all persons acting on his behalf and not just such information within Respondent's personal knowledge or the personal knowledge of those who assist in answering these interrogatories.

EXHIBIT
3

Interrogatory No. 1: Please state the name, address, job title, and present employer of each person providing information utilized by you in answering these interrogatories.

Interrogatory No. 2: Please state the full name, current address, telephone number, qualifications, and present employment of each person who you expect to call as an expert witness at the formal hearing of this case, the subject matter on which such expert is expected to testify, the substance of the facts and opinions to which such expert is expected to testify, and a summary of the grounds for each opinion expected to be expressed by such expert.

Interrogatory No. 3: Please state the name, current address, email address, and telephone number of each person, including experts, having any knowledge of the facts relating to the allegations in this case.

Interrogatory No. 4: Please state the name, current address, email address, and telephone number of each person who you expect to call as a witness at the formal hearing

in this case and a brief description of the subject matter upon which such person will testify.

Interrogatory No. 5: Please explain why you provided a December 17, 2020 arrival time to your supervisor that did not match the arrival time reflected in video recordings at your employment location.

Interrogatory No. 6: Please explain why you provided a December 18, 2020 arrival time to your supervisor that did not match the arrival time reflected in video recordings at your employment location.

Interrogatory No. 7: Please explain why you provided a December 21, 2020 arrival time to your supervisor that did not match the arrival time reflected in video recordings at your employment location.

Interrogatory No. 8: Please explain why you have not reimbursed $195.21 to Orange County for the overage in salary you received due to the inaccurate work times that you verified on your timesheet.

Interrogatory No. 9: Please provide all dates, since December 1, 2020, in which you reported inaccurate arrival times to your supervisor.

Interrogatory No. 10: Please identify all affirmative or any other defenses that you intend to rely on at final hearing.

Interrogatory No. 11: Contemporaneous with the service of these interrogatories, the undersigned Advocate has forwarded the Advocate's First Request for Admissions to you. If you denied any of the Requests for Admission, please state as to each numbered request denied:

A. All reasons for denying such request.

B. List and attach all documents or records reviewed prior to the denial.

C. List and attach all documents or records relied on in the denial.

D. The full name and address of each person consulted and for each person, the information provided by such person leading to the decision to deny the request.

Use additional pages for your answers, if necessary.

BEFORE ME, the undersigned authority, on this ____day of _____, 2023, personally appeared John Capps, who first being duly sworn, deposes, and says that he has read each question carefully and personally answered same, and that each answer is true and correct, and who did take an oath and understands that the penalty for perjury may be up to 5 years in prison and up to a $5,000 fine.

_____
John Capps

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this____day of _____, 2023, by _____ (name of person making statement).

_____
(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ☐ OR Produced Identification ☐
Type of Identification Produced ____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the forgoing was sent to John Capps, 1551 12th Street, Orange City, FL 32763, jmcapps2002@yahoo.com, via e-mail only, this 16th day of February, 2023.

Melody Hadley
Melody A. Hadley

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: John Capps,

Respondent.

DOAH Case No.: 23-600EC
Complaint No.: 22-024

_____/

ADVOCATE'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Advocate, for the Florida Commission Ethics, by and through the undersigned counsel and pursuant to Rule 1.350, Florida Civil Rules of Procedure, hereby requests that Respondent, John Capps, produce and permit the following for inspection and/or copying, or provide copies by U.S. Mail or e-mail to the Office of the Attorney General, Attention: Melody A. Hadley, The Capitol, PL-01, Tallahassee, FL 32399-1050 OR melody.hadley@myfloridalegal.com, within thirty (30) days of receipt of this request.

INSTRUCTIONS

1. In answering these requests, furnish all information available to you, including information in the possession of your agents, employees, attorneys, investigators, and all others from whom it may be obtained.

2. Whenever these requests seek information which is not available to you in the form requested but is available in another form or can be obtained elsewhere, so state and either supply the data from which the information requested can be obtained.

3. Each request should be construed independently and not with reference to any other request for purposes of limitation, except where so designated specifically.

4. If any information sought by these requests is withheld because you claim that such information is privileged, state the basis upon which any privilege is founded, and the general subject matter of the information withheld.

DEFINITIONS

For the purposes of this First Request for Production of Documents, the terms set forth

EXHIBIT
4

herein shall be defined as follows:

5. As used herein, **"Respondent," "you," or "your"** shall mean the Respondent, or any iteration thereof.

6. **"Advocate,"** refers to, without limitation, Florida Commission on Ethics.

7. **"Document"** means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including, but not limited to, correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in any form, including copies, drafts, and reproductions. **"Document"** also refers to any other data compilations from which information can be obtained, and translated, if necessary, into reasonably usable form by you through computer or detection device.

8. **"Produce"** means to make available the documents requested herein for inspection and copying and to separate such documents into categories set forth in this request. If you decline to produce any documents requested hereinafter on the basis of any privilege recognized by law, you shall, at the time of production herein designated, provide Advocate with the following written information as to each document:

(a) The title or other means of identification of each said document;

(b) The type of document (e.g. letter, memorandum, record, etc.);

(c) The date of such document;

(d) The author of each such document;

(e) The recipient or recipients of each such document, including but not

limited to Respondent or anyone who purports to represent Respondent;

(f) The present location of any and all copies of each such document in the care, custody, or control of Respondent;

(g) The names and current addresses of any and all persons who have custody or control of each such document or copies thereof; and

(h) If all copies of the document have been destroyed, the names and current addresses of the person or persons authorizing the destruction of such document and the date such document was destroyed.

9. If any document(s) described herein has already been produced to Advocate, identify the corresponding request(s) to which such document(s) relates.

10. Terms used in the singular shall be deemed to include the plural and terms used in the plural shall be deemed to include the singular.

11. Use of feminine pronouns shall be deemed to include the masculine and neuter, and use of masculine pronouns shall be deemed to include the feminine and neuter.

12. **"Case or Complaint"** refers to Complaint No. 22-024 previously filed with the Commission on Ethics.

DOCUMENTS TO BE PRODUCED

1. All documents reviewed in response to Advocate's First Set of Interrogatories.

2. All documents expected or anticipated to be introduced at the final hearing in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the forgoing was sent to John Capps, 1551 12th Street, Orange City, FL 32763, jmcapps2002@yahoo.com, via e-mail only, this 16th day of February, 2023.

Melody A. Hadley

Melody Hadley

From: Melody Hadley
Sent: Thursday, March 16, 2023 3:54 PM
To: John Capps
Cc: Elizabeth Miller
Subject: FW: SERVICE OF COURT FILING: IN RE: JOHN CAPPS (DOAH 23-600EC)
Attachments: Advocate's Notice of Service.pdf; Advocate's First Set of Interrogatories to Respondent.pdf; Advocate's Request for Admissions.pdf; Advocate's First Request for Production of Documents.pdf

Good Afternoon Mr. Capps,

Please take note that your responses are due by Monday, March 20, 2023.

Thanks,
Melody Hadley

From: Melody Hadley
Sent: Monday, March 13, 2023 10:25 AM
To: John Capps <jmcapps2002@yahoo.com>
Cc: Elizabeth Miller <Elizabeth.Miller@myfloridalegal.com>
Subject: FW: SERVICE OF COURT FILING: IN RE: JOHN CAPPS (DOAH 23-600EC)

Good Morning Mr. Capps,

Please take note that your responses are due by Monday, March 20, 2023.

Thanks,
Melody Hadley

From: Melody Hadley
Sent: Thursday, February 16, 2023 2:22 PM
To: John Capps <jmcapps2002@yahoo.com>
Cc: Elizabeth Miller <Elizabeth.Miller@myfloridalegal.com>; Rakisha Everett <Rakisha.Everett@myfloridalegal.com>
Subject: SERVICE OF COURT FILING: IN RE: JOHN CAPPS (DOAH 23-600EC)

CASE	In Re: John Capps
COURT	Division of Administrative Hearings
CASE NUMBER	23-600EC
DOCUMENTS	Advocate's Notice of Discovery, Advocate's First Set of Interrogatories, Advocate's Request for Admissions, and Advocate's First Request for Production of Documents
DOCUMENTS TO BE SERVED BY U.S. MAIL	No
ADVOCATE FOR THE COMMISSION ON ETHICS	Melody A. Hadley
CONTACT INFORMATION FOR ADVOCATE	Please see information below

Melody A. Hadley

EXHIBIT
tabbies
5

Senior Assistant Attorney General
Advocate, Commission on Ethics
Ethics Bureau
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
Tel: (850) 414-3704
Fax: (850) 488-4872
E-mail: melody.hadley@myfloridalegal.com

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: JOHN CAPPS, Case No. 23-0600EC

Respondent.
_____/

ORDER RELINQUISHING JURISDICTION AND CLOSING FILE

On March 28, 2023, the Advocate for the Commission on Ethics ("Advocate") filed a Motion to Deem Matters Admitted and to Relinquish Jurisdiction Pursuant to Section 12.57(1)(i), Florida Statutes ("Motion to Relinquish"). On April 5, 2023, the undersigned issued an Order directing Respondent to fully provide responses or objections to the First Set of Requests for Admissions by April 10, 2023.

The period for Respondent to reply to the Order has expired and no response has been filed with the Division of Administrative Hearings (DOAH). Therefore, in accordance with Florida Rule of Civil Procedure 1.370(a), the Department's Requests for Admissions (Admissions 1 through 27) are deemed admitted. As a result of the facts being deemed admitted, there are no remaining genuine issues of material fact in this case.

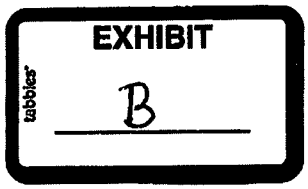
Accordingly, pursuant to section 120.57(1)(i), Florida Statutes, it is

ORDERED that:

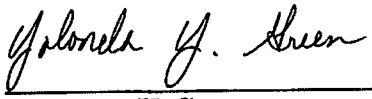
1. Petitioner's Motion to Relinquish is granted. Petitioner's Admissions are deemed admitted.

2. The final hearing in this matter scheduled for April 17, 2023, is hereby canceled; and

3. The DOAH file is closed. Jurisdiction of this matter is relinquished to the Advocate for the Commission on Ethics.



DONE AND ORDERED this 14th day of April, 2023, in Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

COPIES FURNISHED:

Millie Wells Fulford, Agency Clerk
(eServed)

John Capps
(Address of Record)

Elizabeth A. Miller, Esquire
(eServed)

Melody A. Hadley, Esquire
(eServed)