

EXECUTIVE DIRECTOR'S REPORT

TO: Members, Commission on Ethics

FROM: Kerrie Stillman
Executive Director

DATE: February 21, 2024

ADVISORY OPINIONS

The Commission on Ethics issued two opinions at its January meeting. It has rendered 2,704 opinions since its inception in 1974.

LITIGATION

Filing #192080225 (e-filed on February 15, 2024), **Town of Briny Breezes, Florida et al. v. Lukis et al. (Fla. 2nd Circ. Ct.)**. Plaintiffs are twenty-six municipalities and the elected municipal officers from twenty-four municipalities. 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. As of the date of this report, no case number has yet been assigned. The Commission has requested representation for all defendants from the Office of the Attorney General. Steven Zuilkowski and Gray Schafer will be 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)**. Plaintiffs are elected municipal officers from twenty-four municipalities. 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 Commission has requested representation for all defendants from the Office of the Attorney General. Steven Zuilkowski and Gray Schafer will be the Commission's points of contact with lead counsel.

Case Number 1D22-924, Daphne Campbell v. Florida Commission on Ethics. This is an appeal of Complaint No. 18-090. Appellant filed her Reply Brief on December 22, 2022. 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 the panel of judges considering the merits of the appeal. Neither party requested oral argument, so we await the Court's ruling on the merits. On January 3, 2024, Gray Schafer contacted the clerk's office to check on the case, as it has been a year since we filed the Motion to Strike; the clerk's office confirmed that the case is yet to be decided. Gray Schafer, Melody Hadley, and Steven Zuilkowski are handling the appeal.

Case Number 1D22-3429, Douglas Underhill v. State of Florida, Commission on Ethics.

This is an appeal of Complaint Nos. 20-060, 20-073, and 20-103 (cons.). All briefs are filed. Neither side requested oral argument. We now await the Court's ruling. Elizabeth Miller, 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.

Background: 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.

Matters Concerning a Stay of the District Court Injunction: The Office of the Solicitor General filed a motion requesting a stay of the ruling as to all public officers in the State except Garcia, who was the only plaintiff found to have standing by the district court. An Eleventh Circuit motions panel granted our motion to stay the district court's permanent injunction to the extent it applied to any public officers other than Garcia, the only plaintiff with standing. Judges Jordan and Jill Pryor concurred, saying that they would have denied the motion had the district court found facial overbreadth. (This means that the "In-Office" Lobbying Restriction is currently enforceable to all public officers in Florida except Garcia.) On 12/11/23, Plaintiffs moved for reconsideration of the partial stay or a limited remand to the district court for clarification of the injunction order, specifically whether the district court actually found facial overbreadth. On 12/21/23, the Office of the Solicitor General opposed both requests for relief that Plaintiffs made in their motion. On 12/28/23, Plaintiffs filed a reply in support of their motion. To date, the Eleventh Circuit has not ruled on the motion. On the same day Plaintiffs sought reconsideration or remand in the Eleventh Circuit, they also moved the district court to clarify its permanent injunction order re: facial overbreadth (i.e., "motion for indicative ruling"). The Solicitor General's Office opposed (12/26/23). Plaintiffs filed a reply in support of their motion (1/2/24). The district court has not ruled on the motion.

Merits of the Appeal: The Office of the Solicitor General has filed Appellants' Initial Brief. Plaintiffs' Answer/Cross-Appeal-Initial-Brief was due 1/25/24.

The Solicitor General's Office is handling the cases. Steven Zuilkowski is monitoring.

STAFF ANNOUNCEMENTS AND SPEAKING ENGAGEMENTS

Kerrie spoke at the Department of Revenue's continuing education course for Property Appraisers and Tax Collectors in Orlando, on February 2. She will be the lunch speaker at the Florida Public Relations Association's Leadership Class, in Tallahassee, on February 23. On February 27 she will provide ethics training at the Department of Revenue's Duties and

Responsibilities of Tax Collectors course, which is a part of their certification course for Tax Collectors and their employees.

At the invitation of Senator Pizzo and Senator Gruters, Steve provided a live 1.5 hour webinar on the Form 6 requirement for City Commissioners and Mayors on January 19. A link to the recording is available on the Commission's homepage. On February 5, he provided three hours of ethics training for the Tallahassee City Commission.

Lynn gave a 2-hour Zoom presentation on EFDMS to the Florida Association of City Clerks on February 8.

On February 29, Steve, Gray, and Kathy will be presenting at the Florida Bar's Sunshine Law Conference, via Zoom. The Commission Advocates speak at the same conference on March 1.

FINANCES

As of January 31, we've spent \$1,626,762.87 (55.17%) of our appropriation, with 58.33% of 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 01/31/24)
Complaint No. 23-016, In re Aneala Beachum (Final Order 01/31/24)
Complaint No. 23-094, In re David Law (Final Order 01/31/24)

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) *on appeal

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)

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Complaint No. 22-075, In re Buchanan, Ingersoll, and Rooney (12/2/22)