

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

In re: Jeffrey Siskind,

Respondent.

DOAH Case No.: 22-0053EC

Complaint No.: 18-185

JOINT PREHEARING STIPULATION

Pursuant to the Administrative Law Judge's Prehearing Order, the Advocate for the Florida Commission on Ethics and Respondent jointly submit this Prehearing Stipulation in this cause scheduled for final hearing on March 16, 2022 at 9:30 a.m., by Zoom conference. This document indicates areas wherein no consensus could be reached.

A. NATURE OF THE CONTROVERSY

I. Advocate's Position

This is an action before the Commission on Ethics which has been brought against Respondent, Jeffrey Siskind, pursuant to Part III, Chapter 112, Florida Statutes. The issue, as presented in the Commission's Order Finding Probable Cause, is:

Whether Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate CE Form 6, "Full and Public Disclosure of Financial Interests," for the year 2017 and, if so, what is the appropriate penalty?

II. Respondent's Position

Respondent did not file an inaccurate CE Form 6, "Full and Public Disclosure of Financial Interests," for the year 2017. The form was accurate and was prepared by Respondent who relied upon his business background and employed a reasonable method of valuation for a

start-up enterprise. Nor did Respondent violate Article II, Section 8, Florida Constitution, or Section 112.3144, Florida Statutes, and this should be obvious to both the Commission and the Advocate, whose perpetuation of this matter constitutes malicious prosecution and abuse of process because the prosecution of Respondent does not have a basis in law. Both the Commission, which is a function of state government, and the Advocate, who is employed by and is an agent of the Office of the Attorney General, State of Florida, have incorrectly interpreted Florida's Constitution and Section 112.3144, Florida Statutes to frame a false and unsupportable cause of action against Respondent. Advancing this false cause of action amounts to a violation of Respondent's civil rights as guaranteed by the state and federal constitutions. Respondent should be found not to have violated any constitutional provision or statute, and should recover its reasonable attorney's fees and costs in full, and punitive damages against the State of Florida and the Advocate.

B. STATEMENTS OF POSITION

I. Advocate's Position

As a candidate for the position of Attorney General of Florida, Respondent filed a 2017 CE Form 6, "Full and Public Disclosure of Financial Interests," on June 22, 2018. Respondent used June 20, 2018 as his reporting date. He listed his net worth as \$2,120,035.77 in Part A – Net Worth and Western Credit Resolution Trust (Trust) as an asset worth \$5,574,554.20 under Part B – Assets. By his signature on the form, Respondent swore an oath that his form was true, accurate, and complete.

The CE Form 6 instructions provide, "How to Value Assets: Value each asset by its fair market value on the date used in Part A for your net worth." According to Merriam-Webster,

“fair market value” is defined as a price at which buyers and sellers with a reasonable knowledge of pertinent facts and not acting under any compulsion are willing to do business.

Respondent disclosed an inaccurate value of the Trust on his 2017 form. This inaccurate value was used by Respondent to calculate his net worth and, thus, his disclosed net worth is inaccurate.

There are items that should have been properly disclosed which affected the accuracy of Respondent’s disclosure form.

II. Respondent’s Position

In addition to Respondent’s foregoing assertions stated in part A.II. above, Respondent asserts that the Commission violated its own rules and/or statutory requirements in perpetuating this matter by not timely forwarding the complaint to Respondent, and that any technical violation of a rule or statutory requirement should be strictly enforced against the Advocate. Moreover, the CE Form 6 that the Commission and the Advocate insist was inaccurate was supplemented by the Respondent with information that more fully disclosed the basis of Respondent’s analysis and was based on Respondent’s actual experience.

C. EXHIBITS

Respondent objects to the use of legible, accurate copies of original documents if not properly authenticated. Advocate disagrees with the objection.

Joint Exhibits

1. Respondent’s 2017 CE Form 6 (filed June 22, 2018)
2. 2017 CE Form 6 with instructions (blank)

Advocate's Exhibits

1. Complaint #18-185
2. Report of Investigation #18-185
3. Determination of Investigative Jurisdiction and Order to Investigate #18-185
4. Order Finding Probable Cause #18-185
5. Meeting of Creditors 341 Transcript dated July 9, 2018 - Respondent objects to the use or admission of this exhibit based on relevance.
6. Respondent's 2017 CE Form 6
7. 2017 CE Form 6 with instructions (blank)
8. CannaMED Pharmaceuticals, LLC Corporate Charters & Articles of Organization - Respondent objects to the use or admission of this exhibit based on relevance.
9. CannaMED Pharmaceuticals, LLC Business Registration with the State of Maryland – Resident Agent “Jeffrey M. Siskind” - Respondent objects to the use or admission of this exhibit based on relevance.
10. CannaMED Pharmaceuticals, LLC Business Registration with the State of Maryland – Resident Agent “Marc W. Ottinger” - Respondent objects to the use or admission of this exhibit based on relevance.
11. Chance & Anthem, LLC Business Registration with the State of Florida - Respondent objects to the use or admission of this exhibit based on relevance.
12. Chance & Anthem, LLC Bankruptcy Filings dated February 18, 2018 - Respondent objects to the use or admission of this exhibit based on relevance.
13. Chance & Anthem, LLC Bankruptcy Filings dated April 24, 2018 - Respondent objects to the use or admission of this exhibit based on relevance.
14. Individual Estate Property Record & Report Asset Cases – Chance & Anthem, LLC - Respondent objects to the use or admission of this exhibit based on relevance.
15. Adversary Complaint - Chance & Anthem, LLC - Respondent objects to the use or admission of this exhibit based on relevance.
16. Expedited Motion for Injunction & Other Relief – Chance & Anthem, LLC - Respondent objects to the use or admission of this exhibit based on relevance.
17. DEA Rule on Manufacturing Marijuana & CannaMED Reinstatement/Name Change
18. Western Credit Resolution Trust
19. Respondent's Initial Valuation of Trust - Respondent objects to the use or admission of this exhibit based on form' Respondent cannot identify this exhibit.
20. “2004 Examination of Jeffrey Siskind” dated September 5, 2018 - Respondent objects to the use or admission of this exhibit based on relevance.
21. “Continued 2004 Examination of Jeffrey Siskind” dated December 19, 2019 - Respondent objects to the use or admission of this exhibit based on relevance.

22. Exhibits furnished by Respondent (upon receipt)

Rebuttal and Impeachment exhibits

Any records used or submitted into evidence by Respondent

NOTE: Respondent reserves the right to state further objections at the hearing.

Respondent's Exhibits

All three filed financial disclosures – Advocate objects to any financial disclosures which are not drafted on forms prepared by the Commission on Ethics.

Latest email exchanges with DEA – Advocate objects based on relevancy.

Correspondence with Ethics Commission and/or individual Commissioners - Advocate objects based on relevancy.

Excerpts from the U.S. Federal Register – Advocate objects based on relevancy.

Records associated with name Change from CannaMED to NuCanna - Advocate objects based on relevancy.

Records of sales of participation units in CannaMED/NuCanna - Advocate objects based on relevancy.

Exhibits used for rebuttal or impeachment.

Respondent's curriculum vitae - Advocate objects based on relevancy.

NOTE: Advocate reserves the right to state further objections at the hearing.

D. NAMES AND ADDRESSES OF WITNESSES

I. Advocate's Witnesses:

1. Jeffrey Siskind, Respondent
2. Robert Malone, Investigator, Florida Commission on Ethics (please contact Inv. Moalli through Melody Hadley, The Capitol, PL-01, Office of Attorney General, Tallahassee, FL 32399; (850) 414-3704))

3. Robert C. Furr, 2255 Glades Rd., Suite 301E, Boca Raton, FL 33431, (561) 395-1840
4. Robert Gibson, 313 Datura St., Suite 200, West Palm Beach, FL 33401, (561) 868-2100
5. Department of State, Division of Elections representative – Respondent objects to the use of an unidentified witness.
6. Drug Enforcement Administration (DEA) representative– Respondent objects to the use of an unidentified witness.
7. Maryland Medical Cannabis Commission representative– Respondent objects to the use of an unidentified witness.

Any witnesses called to testify by Respondent

II. Respondent's Witnesses:

Jeffrey Siskind, 3465 Santa Barbara Drive, Wellington, Florida 33414
Kathleen Mann, contact information known to Commission on Ethics
Melody Hadley, contact information known to Office of the Attorney General.
Valuation Expert Joshua B. Angell, 11025 RCA Center Drive, Ste. 401, Palm Beach
Gardens, FL 33410

E. FACTS WHICH ARE ADMITTED AND WILL REQUIRE NO PROOF AT HEARING

1. Respondent was a candidate for the Florida Attorney General in 2018.
2. Respondent, by virtue of his position as a candidate for Florida Attorney General in 2018, was subject to Article II, Section 8, Florida Constitution, and was subject to the requirements of Part III, Chapter 112, Florida Statutes, Code of Ethics.
3. On June 22, 2018, Respondent filed a 2017 CE Form 6, "Full and Public Disclosure of Financial Interests."
4. Respondent read the instructions for the 2017 CE Form 6 prior to its completion.

F. ISSUES OF LAW ON WHICH THERE IS AGREEMENT

1. Respondent is subject to the requirements of Part III, Chapter 112, Florida Statutes, the Code of Ethics for public officers and employees, as he was a candidate for Office of the Attorney General in 2018.

2. The burden of proof, absent a statutory directive to the contrary, is on the Florida Commission on Ethics, the party asserting the affirmative of the issue of these proceedings. *Department of Transportation v. J.W.C. Co., Inc.*, 396 So.2d 778 (Fla. 1st DCA 1981); *Balino v. Department of Health and Rehabilitative Services*, 348 So.2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting the affirmative: that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes. Commission on Ethics proceedings which seek recommended penalties against a public officer or employee require proof of the alleged violation(s) by clear and convincing evidence. See *Latham v. Florida Comm'n on Ethics*, 694 So. 2d 83 (Fla. 1st DCA 1997). Therefore, the burden of establishing by clear and convincing evidence the elements of Respondent's violation is on the Commission.

As noted by the Supreme Court of Florida:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re: Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). The Supreme Court of Florida also explained, however, that, although

the "clear and convincing" standard requires more than a "preponderance of the evidence," it does not require proof "beyond and to the exclusion of a reasonable doubt." *Id.*

3. Article II, Section 8, Florida Constitution provides:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

* * *

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

* * *

(i) ~~Schedule~~—On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the secretary of state by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

a. A copy of the person's most recent federal income tax return;
or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

(2) Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to subsection (i)(1).

* * *

4. The parties agree that the Rule of Sequestration will be invoked.

G. ISSUES OF FACT WHICH REMAIN TO BE LITIGATED

I. Advocate's Position

Whether Respondent inaccurately reported the value of asset, Western Credit Resolution Trust, and his net worth.

II. Respondent's Position

Respondent utilized an acceptable method of valuation and acted in good faith. Respondent did not violate Fl. Const. Art II, Section 8 or Section 112.3144, Florida Statutes. This should be obvious to the Advocate and the Commission. Advancing this case against Respondent constitutes both malicious prosecution and abuse of process.

H. ISSUES OF LAW WHICH REMAIN FOR ADMINISTRATIVE LAW JUDGE'S DETERMINATION

I. Advocate's Position

Whether Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

II. Respondent's Position

Whether the Advocate and the Commission are maliciously prosecuting Respondent and abusing process by improperly expanding upon the specific text contained in Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

I. DISAGREEMENTS AS TO APPLICATION OF RULES OF EVIDENCE

There are no disagreements as to application of rules of evidence. The parties agree that evidence may be taken in accordance with Sections 120.569 and 120.57, Florida Statutes.

J. PENDING MOTIONS

There are no pending motions; however, Advocate and Respondent reserve the right to make motions in limine and/or other motions before and during the trial.

K. ESTIMATED LENGTH OF TIME REQUIRED FOR HEARING

The Advocate and Respondent estimate that one (1) day should be sufficient time for the final hearing in this case.

Respectfully submitted this 8th day of March, 2022.

_____/s/ Melody Hadley_____
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_____/s/ Jeffrey M. Siskind_____
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