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Building E, Suite 200
Tallahassee, Florida 32303

"A Public Office is a Public Trust"

MEMORANDUM

TO: Commission Members
FROM: Gray Schafer, Assistant General Counsel 
DATE: August 28, 2024
RE: Rule Hearing on amendments to Chapter 34-5

The Commission is being asked to consider and approve rulemaking involving a necessary update to two rules found in Chapter 34-5, Florida Administrative Code (F.A.C.). The rule amendments have been duly noticed and materials have been provided to the Joint Administrative Procedures Committee.

This rulemaking is intended to update certain rules regarding the handling of ethics complaints and will reflect recent changes made by Ch. 2024-253, Laws of Florida. The updates are necessary to implement statutory amendments made by the law to Sections 112.317 and 112.324, Florida Statutes. The particular amendments in question, which will be discussed below, took effect when the underlying act became law on June 21, 2024. Rulemaking authority for these changes is found in Section 112.322(9), Florida Statutes, which allows the Commission "to make such rules not inconsistent with law" regarding its practices and procedures. (emphasis added).

Turning first to Section 112.324—a statute addressing the Commission's procedures for handling complaints—the amendments limit the Commission's investigative authority concerning written complaints to only those allegations "based upon personal knowledge or information other than hearsay." Considering this, several updates need to be made to Chapter 34-5 to implement this language.

First, Rule 34-5.002(1) will be updated to reflect that the Executive Director of the Commission must consider whether an allegation is based on the complainant's personal knowledge or information other than hearsay when evaluating its legal sufficiency.

Second, Rule 34-5.002(2) will be updated to indicate that for an allegation to be legally sufficient, each element of the statute to be investigated must be supported in the complaint by personal knowledge or information other than hearsay, except for elements concerning intent.

Third, Rule 34-5.002(2) will be updated to include language from Florida Elections Commission v. Valliere, 45 So. 3d 506 (Fla. 4th DCA 2010), to clarify the circumstances in which an allegation may be considered to be based on information other than hearsay. According to the Fourth District—which was interpreting this same phrase in the context of the Florida Elections Code—an allegation meets this standard so long as it is based on information that is or likely will be admissible under a statutory hearsay exception. Exact language and examples from the Fourth District's opinion will be used in the rule.

Fourth, Rule 34-5.002(2) will further clarify that when a complaint is filed in a representative capacity—such as by an incorporated association or group—an allegation within it can only be investigated if it is supported by the personal knowledge of the person signing the complaint, the personal knowledge of the individuals who authorized the signing of the complaint, or information other than hearsay.

And, fifth, Rule 34-5.002(2) will be updated to indicate that an allegation in a complaint may be found legally sufficient for investigation even if other allegations in the same complaint are not (i.e., the other allegations are found not be based upon personal knowledge or information other than hearsay).

Turning next to Section 112.317, the statutory amendments in Ch. 2024-253 indicates that candidates for public office may petition to recover costs and reasonable attorney's fees in ethics complaint matters. Previously, Section 112.317 only allowed public officers or employees to petition for reasonable costs and fees. Because of this change, Rule 34-5.0291—which is a rule dealing with the award of attorney's fees in ethics complaint matters—needs to be updated. In particular, subsections (1), (2), and (3) of Rule 34-5.0291 will be modified to reflect that candidates for public office may petition to recover costs and attorney's fees.

The Notice of Proposed Rulemaking, the text of the proposed amended rules, and a copy of Florida Elections Commission v. Valliere, cited herein, are attached. You will be asked to approve this proposed rulemaking at your September 13, 2024, Commission meeting.

Attachments

Section II
Proposed Rules

→ COMMISSION ON ETHICS

RULE NOS.: **RULE TITLES:**
 34-5.002 Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation; Review of Allegations of Failure to Properly Complete Financial Disclosure Forms

34-5.0291 Award of Attorney's Fees
PURPOSE AND EFFECT: This rulemaking is intended to update certain rules within Chapter 34-5, F.A.C., to reflect recent changes that Ch. 2024-253, Laws of Florida, made to Sections 112.317 and 112.324, Florida Statutes. The effect of the changes will be to limit the Commission's investigation of alleged violations to only those which are based upon personal knowledge or information other than hearsay, in accordance with the statutory amendment. The rules will also clarify in what circumstances an allegation will be considered to be based on information other than hearsay. In addition, the rules will indicate that candidates for public office who are the subject of an ethics complaint may petition for an award of costs and reasonable attorney fees, in accordance with the statutory amendment.

SUMMARY: Rule 34-5.002(1) will be updated to reflect that, when evaluating whether an allegation in a complaint is legally sufficient, the Executive Director of the Commission must consider whether it is based on the complainant's personal knowledge or information other than hearsay. Rule 34-5.002(2) will be amended to indicate that for an allegation to be legally sufficient, each element of the statute to be investigated must be supported in the complaint by personal information or information other than hearsay. Rule 34-5.002(2) will also indicate the circumstances in which an allegation will be considered to be based on information other than hearsay. In particular, the rule will indicate that, in accordance with the Fourth District Court of Appeal's ruling in "Florida Elections Commission v. Valliere," 45 So. 3d 506 (2010), which interpreted the meaning of this same phrase when used in the Florida Elections Code, the evidence supporting the allegation can be based on hearsay that is or likely will be admissible under a statutory hearsay exception. Exact language from the court's ruling will be used in the rule. Rule 34-5.002(2) will go on to clarify how complaints will be assessed when filed in a representative capacity on behalf of an incorporated association or group, as well as how an allegation may be found legally sufficient even if other allegations in the complaint are not. Finally, provisions in Rule 34-5.0291 will be updated to indicate that candidates for public office may petition for costs and reasonable attorney's fees, and will be considered parties if

a fees hearing is held at the Division of Administrative Hearings.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: considering that these changes pertain only to the internal processes of the Commission (i.e., evaluation of the legal sufficiency of complaints) and the recovery of costs and reasonable attorney's fees from a private complainant, the adverse impact or regulatory cost, if any, do not exceed and would not be expected to exceed any one of the economic criteria set forth in Section 120.541(2)(a), FS.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 112.322(9), FS.

LAW IMPLEMENTED: 112.317 and 112.324, FS. (as amended by Ch. 2024-253, Laws of Fla.)

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 13, 2024, 8:30 a.m.

PLACE: First District Court of Appeal, Third Floor Courtroom, 2000 Drayton Drive, Tallahassee, Florida.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Diana Westberry, Office Manager, Florida Commission on Ethics, (850)488-7864. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gray Schafer, Assistant General Counsel, Florida Commission on Ethics, (850)488-7864

THE FULL TEXT OF THE PROPOSED RULE IS:

34-5.002 Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation; Review of Allegations of Failure to Properly

Complete Financial Disclosure Forms.

(1) Legal Sufficiency Review. After a complaint has been subject to a Technical and Clerical Review, as described in Rule 34-5.001(2), F.A.C., reviewed and found to be in proper form, the complaint shall be reviewed by the Executive Director in order to determine whether the complaint is legally sufficient to allege a breach of public trust. Complaints need not be as precise as would be required by the rules of civil procedure in a court of law and shall be deemed sufficient if the complainant under oath upon knowledge or belief alleges matters which, if true, may constitute a breach of public trust, and the allegation of a breach of the public trust is based upon personal knowledge or information other than hearsay. A complaint shall not be insufficient because it is based upon evidence which would be hearsay evidence in a court of law. In order to make this determination, the Executive Director may request additional information from the complainant and may obtain information from public records.

(2) Personal Knowledge or Information Other Than Hearsay. For an allegation to be considered legally sufficient, each element of the statute to be investigated, except elements pertaining to mental state, intent, or knowledge of an individual, must be supported by information in the complaint that is based on personal knowledge of the complainant or information other than hearsay.

(a) An allegation will be considered based on information other than hearsay so long as the evidence supporting the allegation is:

1. Information that is not hearsay;
2. Hearsay that is admissible under Sections 90.801 through 90.805, F.S. (e.g., the admission of a public officer); or
3. Hearsay that will likely be admissible under Sections 90.801 through 90.805, F.S. (e.g., a campaign treasurer report that would be admissible with the testimony of a records custodian, as provided by Section 90.803(6)(a), F.S.).

(b) In the case of a complaint filed in a representative capacity on behalf of an incorporated association or group, an allegation of a breach of public trust will be considered legally sufficient only if every element of the statute(s) to be investigated, except elements pertaining to the mental state, intent, or knowledge of an individual, is supported by information in the complaint that is based upon the personal knowledge of the person(s) signing the complaint, the personal knowledge of the individuals(s) who authorized the signing of the complaint, or information other than hearsay.

(c) A determination that a particular allegation in a complaint is legally sufficient to establish a breach of the public trust may be made even when other allegations in the complaint are determined not to be based upon personal knowledge or information other than hearsay.

(3)(2) No change.

(4)(3) No change.

(5)(4) No change.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., Chapter 2014-183 Sections 3 and 4, LOF, 112.3144, 112.3145, 112.322, 112.324 FS. History—New 4-7-77, Amended 9-21-77, 7-13-80, 1-12-82, Formerly 34-5.02, Amended 10-29-13, 10-19-14, ____.

34-5.0291 Award of Attorney's Fees.

(1) If the Commission determines that a person has filed a complaint against a public officer or employee or a candidate for public office with a malicious intent to injure the reputation of such officer or employee or candidate by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of the Code of Ethics, the complainant shall be liable for costs plus reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees.

(2) The Commission shall make such a determination only upon a petition for costs and attorney's fees filed with the Commission by the public officer or employee or candidate for public office complained against within 30 days following a dismissal of the complaint. Such petition shall state with particularity the facts and grounds which would prove entitlement to costs and attorney's fees and shall include the amount of such costs and attorney's fees expended by, or on behalf of, such petitioner through the date of the filing of the petition. Staff shall forward a copy of said petition to the complainant by certified mail, return receipt requested.

(3) If the facts and grounds alleged in the petition are not sufficient to state a claim for costs and reasonable attorney's fees, the Commission shall dismiss the petition after an informal proceeding. If the Commission determines that the facts and grounds are sufficient, the Chair after considering the Commission's workload, shall direct that the hearing of the petition be held before the Division of Administrative Hearings, the full Commission, or a single Commission member serving as hearing officer. Commission hearing officers shall be appointed by the Chair. The hearing shall be a formal proceeding under Chapter 120, F.S., and the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C. All discovery and hearing procedures shall be governed by the applicable provisions of Chapter 120, F.S. and Chapter 28-106, F.A.C. The parties to the hearing shall be the petitioner (i.e., the public officer or employee or candidate for public office who was the respondent in the complaint proceeding) and the complainant(s), who may be represented by legal counsel.

(4) No change.

(5) No change.

(6) No change.

Rulemaking Authority 112.322(9) FS. Law Implemented 112.317(7)(8), 112.322, 112.324 FS. History--New 2-16-95, Amended 7-28-98, 7-30-00, 9-4-12, ____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gray Schafer, Assistant General Counsel, Florida Commission on Ethics, (850)488-7864.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kerrie J. Stillman, Executive Director, Florida Commission on Ethics

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 14, 2024

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 14, 2024

COMMISSION ON ETHICS

RULE NOS.:	RULE TITLES:
34-17.004	Staff Procedures upon Receipt of a Referral
34-17.005	Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation

PURPOSE AND EFFECT: This rulemaking is intended to update certain rules within Chapter 34-17, F.A.C., to reflect amendments made by Ch. 2024-253, Laws of Florida, to Section 112.324, Florida Statutes. These statutory changes become effective on October 1, 2024. The effect of the change, all of which are in accordance with the statutory amendments, will be to set a timeline for the Commission to send a copy of a referral to a respondent, to allow the Commission's Executive Director to order that a referral be investigated, and to clarify the procedure if a referral is not found legally sufficient for investigation.

SUMMARY: Rule 34-17.004(2) will be amended to reflect that the Commission's staff must send a copy of a referral concerning a violation of a prohibition over which the Commission has jurisdiction to the alleged violator within 5 days of its receipt. Rule 34-17.005(2) will be amended to remove the requirement that at least six Commissioners must find a referral legally sufficient in order for it to be investigated. This subsection also will be updated to reflect that a referral can be investigated if the Commission's Executive Director finds it to be legally sufficient. And Rule 34-17.005(3) will be amended to reflect that if the Executive Director does not find a referral legally sufficient for investigation, the Commission must approve that finding during executive session.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly

regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: considering that these changes pertain only to the internal processes of the Commission (i.e., the procedural handling of an ethics referral and the manner in which the Commission internally reviews and chooses to investigate a referral), the adverse impact or regulatory cost, if any, do not exceed and would not be expected to exceed any one of the economic criteria set forth in Section 120.541(2)(a), FS.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 112.322(9), FS.

LAW IMPLEMENTED: 112.324, FS. (as amended by Ch. 2024-253, Laws of Fla.)

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 13, 2024, 8:30 a.m.

PLACE: First District Court of Appeal, Third Floor Courtroom, 2000 Drayton Drive, Tallahassee, Florida.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Diana Westberry, Office Manager, Florida Commission on Ethics, (850)488-7864. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gray Schafer, Assistant General Counsel, Florida Commission on Ethics, (850)488-7864.

THE FULL TEXT OF THE PROPOSED RULE IS:

34-17.004 Staff Procedures Upon Receipt of a Referral.

(1) No change.

(2) A copy of the original referral shall be transmitted to the respondent by Commission staff within five (5) days of its receipt.

(3)(2) No change.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History--New 11-24-13, Amended ____.

34-5.002 Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation; Review of Allegations of Failure to Properly Complete Financial Disclosure Forms.

(1) Legal Sufficiency Review. After a complaint has been subject to a Technical and Clerical Review, as described in Rule 34-5.001(2), F.A.C., reviewed and found to be in proper form, the complaint shall be reviewed by the Executive Director in order to determine whether the complaint is legally sufficient to allege a breach of public trust. Complaints need not be as precise as would be required by the rules of civil procedure in a court of law and shall be deemed sufficient if the complainant under oath upon knowledge or belief alleges matters which, if true, may constitute a breach of public trust, and the allegation of a breach of the public trust is based upon personal knowledge or information other than hearsay. ~~A complaint shall not be insufficient because it is based upon evidence which would be hearsay evidence in a court of law.~~ In order to make this determination, the Executive Director may request additional information from the complainant and may obtain information from public records.

(2) Personal Knowledge or Information Other Than Hearsay. For an allegation to be considered legally sufficient, each element of the statute to be investigated, except elements pertaining to mental state, intent, or knowledge of an individual, must be supported by information in the complaint that is based on personal knowledge of the complainant or information other than hearsay.

(a) An allegation will be considered based on information other than hearsay so long as the evidence supporting the allegation is:

1. Information that is not hearsay;
2. Hearsay that is admissible under Sections 90.801 through 90.805, F.S. (e.g., the admission of a public officer); or
3. Hearsay that will likely be admissible under Sections 90.801 through 90.805, F.S. (e.g., a campaign treasurer report that would be admissible with the testimony of a records custodian, as provided by Section 90.803(6)(a), F.S.).

(b) In the case of a complaint filed in a representative capacity on behalf of an incorporated association or group, an allegation of a breach of public trust will be considered legally sufficient only if every element of the statute(s) to be investigated, except elements pertaining to the mental state, intent, or knowledge of an individual, is supported by information in the complaint that is based upon the personal knowledge of the person(s) signing the complaint, the personal knowledge of the individuals(s) who authorized the signing of the complaint, or information other than hearsay.

(c) A determination that a particular allegation in a complaint is legally sufficient to establish a breach of the public trust may be made even when other allegations in the complaint are determined not to be based upon personal knowledge or information other than hearsay.

(3)(2) No change.

(4)(3) No change.

(5)(4) No change.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8(f), (h), Fla. Const., Chapter 2014-183 Sections 3 and 4, LOF, 112.3144, 112.3145, 112.322, 112.324 FS. History—New 4-7-77, Amended 9-21-77, 7-13-80, 1-12-82, Formerly 34-5.02, Amended 10-29-13, 10-19-14,_____.

34-5.0291 Award of Attorney's Fees.

(1) If the Commission determines that a person has filed a complaint against a public officer or employee or a candidate for public office with a malicious intent to injure the reputation of such officer or employee or candidate by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of the Code of Ethics, the complainant shall be liable for costs plus reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees.

(2) The Commission shall make such a determination only upon a petition for costs and attorney's fees filed with the Commission by the public officer or employee or candidate for public office complained against within 30 days following a dismissal of the complaint. Such petition shall state with particularity the facts and grounds which would prove entitlement to costs and attorney's fees and shall include the amount of such costs and attorney's fees expended by, or on behalf of, such petitioner through the date of the filing of the petition. Staff shall forward a copy of said petition to the complainant by certified mail, return receipt requested.

(3) If the facts and grounds alleged in the petition are not sufficient to state a claim for costs and reasonable attorney's fees, the Commission shall dismiss the petition after an informal proceeding. If the Commission determines that the facts and grounds are sufficient, the Chair after considering the Commission's workload, shall direct that the hearing of the petition be held before the Division of Administrative Hearings, the full Commission, or a single Commission member serving as hearing officer. Commission hearing officers shall be appointed by the Chair. The hearing shall be a formal proceeding under Chapter 120, F.S., and the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C. All discovery and hearing procedures shall be governed by the applicable provisions of Chapter 120, F.S. and Chapter 28-106, F.A.C. The parties to the hearing shall be the petitioner (i.e., the public officer or employee or candidate for public office who was the respondent in the complaint proceeding) and the complainant(s), who may be represented by legal counsel.

(4) No change.

(5) No change.

(6) No change.

Rulemaking Authority 112.322(9) FS. Law Implemented 112.317(7)(8), 112.322, 112.324 FS. History—New 2-16-95, Amended 7-28-98, 7-30-00, 9-4-12,_____.

45 So.3d 506
District Court of Appeal of Florida,
Fourth District.

FLORIDA ELECTIONS
COMMISSION, Appellant,

v.

Susan VALLIERE and A.
James Valliere, Appellees.

No. 4D09-2684.

|

Sept. 15, 2010.

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Rehearing Denied Nov. 3, 2010.

Synopsis

Background: Florida Election Commission appealed from an order of the Division of Administrative Hearings dismissing certain election law violations, and the alleged violators cross-appealed the portion of the order finding them guilty of other violations.

[Holding:] The District Court of Appeal, Gross, C.J., held that term “hearsay” in statute governing citizen complaints of election law violations referred to inadmissible hearsay, rather than all out-of-court statements.

Affirmed.

West Headnotes (2)

[1] **Election Law** — Powers and proceedings of board of elections

Term “hearsay,” in statute requiring a sworn complaint alleging election law violations to be “based upon personal information or information other than hearsay,” referred to inadmissible hearsay, rather than hearsay that might be admissible under an exception to the hearsay rule such as a business record; term was ambiguous, reading the term to include all out-

of-court statements offered for their truth would lead to the absurd result of barring nearly all citizen complaints including those based on a candidate's own campaign records, and narrower definition was consistent with the legislative purpose of requiring a degree of reliability from citizen complaints. West's F.S.A. §§ 90.801(1)(c), 90.803(6)(a), 106.25(2).

[2] **Statutes** — Plain Language; Plain, Ordinary, or Common Meaning

Statutes — Plain language; plain, ordinary, common, or literal meaning

Words of common usage, when used in a statute, should be construed in the plain and ordinary sense, because it must be assumed that the legislature knows the plain and ordinary meaning of words used in statutes and that it intended the plain and obvious meaning of the words used.

Attorneys and Law Firms

*507 Eric M. Lipman, Chief Legal Counsel, Florida Elections Commission, Tallahassee, for appellant.

Mark Herron and Robert J. Telfer III of Messer, Caparello & Self, P.A., Tallahassee, for appellee Susan Valliere.

A. James Valliere, Stuart, pro se.

Opinion

GROSS, C.J.

The Florida Election Commission (“FEC”) appeals that portion of a corrected final order entered by an administrative law judge dismissing certain election law violations against Susan Valliere and A. James Valliere. The Vallieres cross appeal that portion of the order finding Susan guilty of two violations and James guilty of one. We affirm and write to address one issue raised in the cross appeal.

Appellees argue for a narrow construction of the term “hearsay” in section 106.25(2), Florida Statutes (2008), which provides in pertinent part:

The commission shall investigate all violations of this chapter and chapter 104, but only after having received either a sworn complaint or information reported to it under this subsection by the Division of Elections. *Such sworn complaint must be based upon personal information or information other than hearsay.*

(Emphasis added). The italicized portion of the statute became effective on January 1, 2008. Ch.2007–30, Laws of Fla. §§ 48, 57. Appellees contend that, as used in section 106.25(2), the term “hearsay” is defined by the evidence code, as being a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” § 90.801(1)(c), Fla. Stat. (2008). Thus, according to appellees, a complainant could not base a complaint upon a campaign treasurer's report, because the report is a “classic example” of hearsay.

The administrative law judge rejected appellees' narrow reading of section 106.25(2). He recognized that the purpose of the language added to that section “was to raise the bar on what complaints would spawn an investigation of a candidate for elective office.” He observed that a strict reading of the “Legislature's attempt to require more reliability from citizen complaints” would come “dangerously close” to being a “prohibition against citizen complaints.” He adopted an interpretation of *508 the term “hearsay” that focused on the reliability of the underlying information:

The better interpretation of the new statutory limitation preserves the distinction between, on the one hand, hearsay that will never be admissible—e.g., the overheard barber shop conversation—and, on the other hand, hearsay that, by itself, is admissible—e.g., the admission of the candidate—or will likely be admissible—e.g., with the testimony of a records custodian, the campaign treasurer's report, as provided by [s]ection 90.80[3](6)(a), Florida Statutes. This interpretation, distinguishing between admissible hearsay and inadmissible hearsay, governs the acceptance of affidavits in summary judgment practice under Rule 1.510, Florida Rules of Civil Procedure, which requires that affidavits be based on “personal knowledge [and] shall set forth such facts as would be admissible in evidence....”

[1] The administrative law judge's construction of the term “hearsay” in section 106.25(2) is well taken. The term is

ambiguous because “reasonable persons can find different meanings in the same language.” *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452, 455 (Fla.1992). A court should not interpret the term “hearsay” in a way that leads “to an unreasonable result or ridiculous conclusion.” *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984). Reading the section 90.801 definition of “hearsay” into section 106.25(2) would lead to an absurd result. The evidence code defines hearsay as a statement that occurs outside of a “trial or hearing.” A citizen complaint to the FEC does not involve a “trial or hearing,” so every “statement” forming the basis of the complaint would necessarily be “hearsay”; no statement, no record of any kind could ever be used in a citizen complaint, even business records or statements by a candidate himself admitting to a campaign violation.

[2] Instead of the absurd results that would arise from application of the technical definition of “hearsay” in the evidence code, the legislature used the term in section 106.25(2) according to its common usage. “Words of common usage, when used in a statute, should be construed in the plain and ordinary sense, because it must be assumed that the Legislature knows the plain and ordinary meaning of words used in statutes and that it intended the plain and obvious meaning of the words used.” *Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co.*, 945 So.2d 1216, 1225 (Fla.2006). The plain and ordinary sense of “hearsay” is “an item of idle or unverified information; gossip; rumor.” *Random House Dictionary of the English Language* 654 (unabridged ed. 1967). The administrative law judge's interpretation of the statute serves the legislative intent to require reliability in citizen complaints in order to generate an investigation, while not setting an unrealistically high bar to enforcement of the election law.

Affirmed.

WARNER, J., and FISHMAN, JANE D., Associate Judge,
Concur.

All Citations

45 So.3d 506, 35 Fla. L. Weekly D2073