

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

IN RE: CARLOS BERUFF,

Case No. 21-2890EC

Respondent.  
\_\_\_\_\_ /

RECOMMENDED ORDER

Administrative Law Judge Hetal Desai, of the Division of Administrative Hearings (DOAH), held a disputed-fact evidentiary hearing on March 9, 2022, by Zoom conference.

APPEARANCES

For Advocate:

Melody A. Hadley, Esquire  
Elizabeth A. Miller, Esquire  
Marlene Katherine Stern, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

For Commission on Ethics:

Caroline M. Klanke, General Counsel  
Florida Commission on Ethics  
Post Office Drawer 15209  
325 John Knox Road  
Tallahassee, Florida 32317-5709

For Respondent:

Mark Herron, Esquire  
Messer Caparello, P.A.  
2618 Centennial Place  
Post Office Box 15579  
Tallahassee, Florida 32317

## STATEMENT OF THE ISSUES

The issues for determination are:

(1) Whether Respondent violated section 112.3145, Florida Statutes, by filing an inaccurate CE Form 1 “Statement of Financial Interests,” for the years 2013, 2014, and 2015; and, if so, what is the appropriate penalty?<sup>1</sup>

(2) Whether the instruction for Part C of the CE Form 1, which provides that “[a] street address should be used, if one exists,” when disclosing the “location or description of real property in this state,” as required in the disclosure requirements of section 112.3145(3)(b)3., is an invalid exercise of delegated legislative authority?

## PRELIMINARY STATEMENT

On March 11, 2020, the Florida Commission on Ethics (Commission) issued an Order Finding Probable Cause to believe that Respondent, Carlos Beruff, violated section 112.3145, Florida Statutes, by filing an inaccurate CE Form 1 “Statement of Financial Interests,” for the years 2013, 2014, and 2015.

The Commission referred the matter to DOAH on September 21, 2021, where it was assigned and set for hearing.

On November 2, 2021, Respondent filed a separate petition with DOAH challenging the validity of an existing rule (DOAH Case No. 21-3339RX). The cases were consolidated. The Commission filed a Motion for Summary Judgment in DOAH Case No. 21-3339RX on November 23, 2021, and a Zoom hearing on the motion was held January 6, 2022. The rule challenge petition was withdrawn on January 7, 2022. Thereafter, the cases were severed and DOAH Case No. 21-3339RX was closed.

---

<sup>1</sup> Unless otherwise noted, statutory references are to the 2013, 2014, or 2015 versions of the Florida Statutes in effect for the year that each CE Form 1 was filed. Most of the statutory language applicable to this case is identical in the 2013, 2014, and 2015 Florida Statutes, and is explained where it is not the same.

On January 14, 2022, Respondent filed a “Notice of Asserting Defense Pursuant to Section 120.57(1) (e), Florida Statutes,” arguing the Commission could not take any action against him based on a rule that was unenforceable.<sup>2</sup> Specifically, Respondent challenged Part C of CE Form 1, claiming the form instructions were an invalid exercise of delegated legislative authority.

On January 18, 2022, the parties submitted a Joint Pre-hearing Stipulation with seven uncontested facts and six areas of agreement regarding the law. These stipulations are incorporated into this Recommended Order where appropriate.

On January 25, 2022, the undersigned issued an Order Canceling Hearing and Denying Respondent’s Motion for Protective Order. The hearing was rescheduled and proceeded on March 9, 2022.

At the final hearing, the Advocate called one witness, Carlos Beruff. Respondent called four witnesses: himself, Keith Powell, Kerrie Stillman, and Margo Holeman. The parties offered 12 exhibits jointly, which were admitted into evidence as Exhibits J1 through J12.<sup>3</sup> The Advocate’s Exhibits P1, P2, and P4 were also admitted into evidence. Respondent offered no additional exhibits at the hearing.

A Transcript of the hearing was filed March 15, 2022. The undersigned granted an “Unopposed Motion for Time Extension to File the Proposed Recommended Order”

---

<sup>2</sup> Respondent did not cite to a specific version of the Florida Statutes in his Notice or Proposed Recommended Order. The statutes in effect from 2013 to 2015 do not include the ability to raise this defense. This language was added through an amendment to the Administrative Procedure Act in 2016. *See* Ch. 2016-116, Laws of Fla. (amending section 120.57(1)(e), Florida Statutes, to state “An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule *or a rule that is an invalid exercise of delegated legislative authority.*”). (emphasis added). The undersigned treats the defense as invoking the current version of the statute.

<sup>3</sup> The parties filed a “Notice of Filing Addendum to Joint Pre-marked Exhibits” for Exhibits J10 through J12 on March 8, 2022.

that was filed on March 29, 2022. Both parties timely filed Proposed Recommended Orders, which have been duly considered.

## FINDINGS OF FACT

### PARTIES & FORMS

1. Respondent served as a member of a number of state, regional, or local government boards, which required him to file a CE Form 1, "Statement of Financial Interests" (the Form 1) for the relevant time period: 2013, 2014, and 2015.

2. These boards included the following:

- Southwest Florida Water Management District (2013 and 2014)
- State College of Florida (2013, 2014, 2015)
- Sarasota Manatee Airport Authority (2013, 2014, 2015)
- Cross Creek CDD (2015)<sup>4</sup>
- Commission on Healthcare and Hospitals (2015)

3. Respondent did not receive compensation for his service on the boards and did not seek reimbursement for any of his expenses related to his public service on these boards.

4. Respondent is a builder and real estate developer. During the relevant time period, Respondent owned and/or operated 75 to 90 limited liability companies (LLCs) or other types of business. These LLCs and businesses owned real property in a number of counties. The exact number of real estate holdings fluctuated regularly.

5. Respondent filed a Form 1 in 2013, 2014, and 2015 for each board on which he served during that year (collectively referred to as Form 1s).

6. On July 14, 2017, Glenn Compton filed a Complaint against Respondent with the Commission (Complaint).

7. Based on the evidence at the hearing, Respondent's Form 1s were prepared and filed by Margo Holeman, Respondent's assistant and an employee of one or more of Respondent's companies.

---

<sup>4</sup> "CDD" refers to Community Development District.

8. Ms. Holeman had been preparing and filing Respondent's financial disclosure forms in the same manner from 2009 to 2017. She obtained the data to fill out the forms from the accounting departments of one or more of Respondent's businesses.

9. Prior to 2017, the Commission had never questioned or rejected Respondent's filings. Neither Ms. Holeman nor Respondent were aware that the Form 1s were problematic until 2017, after the Commission began investigating the Complaint.

10. In response to the Complaint, on April 9, 2019, Respondent amended his 2013, 2014, and 2015 Form 1s, by filing a Form CE-1X (Form 1X) for each of those years (collectively referred to as Form 1Xs). The Form 1Xs were prepared with the advice of counsel.

11. As explained below, the Form 1Xs provided more information than the Form 1s. The Form 1Xs included sources of income not previously included. They also contained more specific descriptions of real estate that were previously described in a manner that was too vague or general to ascertain Respondent's interests.

12. Respondent claimed he amended the Form 1s because he had misinterpreted the distinction between primary and secondary sources of income and did not understand addresses were required to describe the location of disclosable real properties. Moreover, Ms. Holeman testified she also inadvertently failed to check certain boxes.

13. Prior to 2017, neither Respondent nor Ms. Holeman had the Form 1s reviewed by an attorney or certified accountant before filing them with the Commission or appropriate authority. As explained by Respondent, now he has his attorney review his filings:

I mean, you know, I call it fat, dumb, and happy kind of thing. But at the end of the day, I filed [the Form 1s] for three or four different organizations every year on time, and no one ever said -- no one ever picked up the phone and said, "Hey, Carlos, you're doing this wrong," or "you need to add more detail" or "you need to do this or that." So we just went on ... with life until you [Respondent's attorney] came along, and now I don't do anything without calling you to make sure I cross T's and dot I's correctly.

14. Regardless of who filled out, reviewed, or filed the Form 1s, Respondent was responsible for their accuracy.

THE FORM 1 AND INSTRUCTIONS

15. Section 112.3145(7) requires in part, “Forms for compliance with the disclosure requirements of this section ... shall be created by the commission.” By adopting Florida Administrative Code Rule 34-8.202, the Commission promulgated the Form 1 and the instructions for filling it out.<sup>5</sup>

16. The Form 1 has instructions to assist with its accurate completion and filing.<sup>6</sup> In uppercase letters and in bold, the first page of Form 1 states:

**\*\*\*\*BOTH PARTS OF THIS SECTION MUST BE COMPLETED\*\*\*\***

17. The first “part” of the section is the “DISCLOSURE PERIOD,” which includes the following instructions:

The tax year for most individuals is the calendar year (January 1 through December 31). If that is the case for you, then your financial interests should be reported for the calendar year [2013, 2014, or 2015]; just check the box and you do not need to add any information in this part of the form. However, if you file your IRS tax return based on a tax year that is not the calendar year, you should specify the dates of your tax year in this portion of the form and check the appropriate box. This is the time frame or “disclosure period” for your report.

18. The second “part” of that section is titled “MANNER OF CALCULATING REPORTABLE INTERESTS,” with the following instructions:

As noted on the form, filers have the option of reporting based on either thresholds that are comparative (usually, based on percentage values) or thresholds that are based on absolute dollar values. The instructions on the following pages specifically describe the different thresholds. Check the box that reflects the choice you have made. You must use the type of threshold you have chosen for each part of the form. In other words, if you choose to report based on

---

<sup>5</sup> The Commission readopts Rule 34-8.202 to update the annual financial disclosure form and form instructions for filing the form incorporated in Rule 34-8.202(1).

<sup>6</sup> Unless otherwise noted, the instructions on the 2013, 2014, and 2015 Form 1s are identical.

absolute dollar value thresholds, you cannot use a percentage threshold on any part of the form.<sup>7]</sup>

19. The Form 1 instructions for “Part A – Primary Sources of Income” provide in part:

Part A is intended to require the disclosure of your principal sources of income during the disclosure period.

\* \* \*

[Dollar Value Thresholds Instructions:]

Please list in this part the form the name, address, and principal business activity of each source of your income which exceeded \$2,500 of gross income received by you in your own name or by any other person for your use or benefit.

\* \* \*

[Comparative (Percentage) Thresholds Instructions:]

Please list in this part the form the name, address, and principal business activity of each source of your income which exceeded 5% of the gross income received by you in your own name or by any other person for your benefit or use during the disclosure period.

20. The Form 1 instructions for “Part B – Secondary Sources of Income,” provide in part:

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported in Part A “Primary Sources of Income,” if it meets the reporting threshold. You will **not** have anything to report **unless** during the disclosure period:

\* \* \*

---

<sup>7</sup> See § 112.3145(3), Fla. Stat. (“A person filing a statement of financial interests shall indicate on the statement whether he or she is using the method specified in paragraph (a) or paragraph (b).”). The statute further provides that (a) refers to “comparative (percentage) thresholds” and (b) refers to “dollar value thresholds.”

[Dollar Value Thresholds Instructions:]

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, LLC, limited partnership, proprietorship, joint venture, trust, firm, etc., doing business in Florida); **and**

(2) You received more than \$5,000 of your gross income during the disclosure period from that business entity.

If your interests and gross income exceeded these thresholds, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's most recently completed fiscal year), the source's address, and the source's principal business activity.

\* \* \*

[Comparative (Percentage) Thresholds Instructions:]

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, LLC, limited partnership, proprietorship, joint venture, trust, firm, etc., doing business in Florida); **and**

(2) You received more than 10% of your gross income from that business entity; **and**

(3) You received more than \$1,500 in gross income from that business entity.

If your interests and gross income exceeded these thresholds, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's most recently completed fiscal year), the source's address, and the source's principal business activity.



21. The Form 1 instructions for “Part C – Real Property” provide in part:

[Either Threshold:]

In this part, list the location or description of all real property in Florida in which you owned directly or indirectly at any time during the previous tax year in excess of 5% of the property’s value. You are not required to list your residences or vacation homes.

Indirect ownership includes situation where you are a beneficiary of a trust that owns the property, as well as situations where you are more than a 5% partner in a partnership or stockholder in a corporation that owns the property. The value of the property may be determined by the most recently assessed value for tax purposes, in the absence of a more current appraisal.

*The location or description of the property should be sufficient to enable anyone who looks at the form to identify the property. A street address should be used, if one exists. (underline and bold italics in original; emphasis in only italics added).*

#### RESPONDENT’S 2013 FORM 1

22. On June 30, 2014, Respondent filed his 2013 CE Form 1, “Statement of Financial Interests” (2013 Form 1).

23. On April 9, 2019, Respondent filed an “Amendment to Statement of Financial Interests,” for the year 2013 (2013 Form 1X).

24. Respondent did not complete the “DISCLOSURE PERIOD” section of the 2013 Form 1. Therefore, the reporting period for this form is unknown.

25. On the 2013 Form 1, Respondent also failed to check the box to indicate whether he was using comparative or dollar value thresholds as his method for calculating reportable interests on his 2013 disclosure form.

26. On his 2013 Form 1X, Respondent corrected the 2013 Form 1 by checking the box indicating that he was using “Comparative (Percentage) Thresholds” as his manner for calculating reportable interests.

27. Comparing the 2013 Form 1 and 2013 Form 1X, Respondent failed to originally list Cargor CM Property Investments as a primary source of income. He corrected this error in his 2013 Form 1X.

28. Additionally, Respondent failed to list four of his secondary sources of income on his 2013 Form 1: Cargor Partners III – Parrish, LLC; Riva Trace, LLC; Sun Coast Title Company, LLC; and Medallion Home at Gamble Creek, LLC. Respondent added these entities to his 2013 Form 1X.

29. Regarding his obligation to list real property in Part C of the 2013 Form 1, Respondent did not provide street addresses, parcel numbers, longitude and latitude, or any other meaningful identification for almost all of the properties on the 2013 Form 1.

30. Instead, he listed his real property as follows:

- Multiple Lots at the Inlets, Bradenton, Florida
- Multiple Lots at Riva Trace, University Park, Florida
- Multiple Lots at Lakes of Mt. Dora, Mt. Dora, Florida
- Multiple lots & houses Bobcat Trail subdivision, North Port
- Multiple lots Jarmarc Industrial Park, Bradenton
- Multiple lots & houses at River Plantation, Parrish
- Multiple lots & houses at Gamble Creek, Parrish
- Multiple lots in Twin Rivers, Manatee County
- Building 2212 58th Avenue E, Bradenton
- Mandarin Grove subdivision, Manatee County
- 20 acres Buckeye Road & Grass Farm Rd, Palmetto
- Lots & house in River Woods subdivision, Parrish
- 35 acres 181 Rye Road, Bradenton
- 23 acres 8923-55 E 25 Street, Parrish
- 80 acres Grass Farm Rd, Manatee County
- 200 acres at Cross Creek Subdivision
- 8200 US 301 North, Ellenton
- Acreage at 15471 SR 62, Parrish
- Multiple Lots & Houses in Enclave 14641 Upper Manatee River Rd, Bradenton
- 55 Crystal Lakes, Palmetto
- 4831 Whitfield Avenue, Bradenton
- 6 BK 8 University Parkway, Sarasota
- 5335 Wingate Rd, Myakka Woods
- 110 acres SR 44, Sumter County
- 1000 acres 1403 SR 44, Wildwood
- Building 165 I Whitfield Ave, Sarasota

Interest in Long Bar Pointe 500 acres  
 Interest in 933 Acres Buckeye Road  
 2 Lots in Foxbrook  
 Upper Manatee River Rd & SR 64 288 acres  
 90 Acres Ft. Hamer & Golf Course Rd  
 Land on Tallevast Rd University Village  
 533 acres on SR 64, Myakka  
 56 Acres Mulholland & Ft. Hamer  
 25 Acres Rye Rd, Manatee

31. In his 2013 Form 1X, Respondent included the county where the property was located, a property identification (ID) number, and either an address or some other form of description for each of the properties described above. The following are some examples of the description of real property disclosed on the 2013 Form 1X.

<b>Area/Subdivision</b>	<b>Description</b>	<b>County</b>	<b>Property ID#</b>
Cascades	Tract CE2 (Conservation Easement)	Manatee	1879221909
Cross Creek	4706 Roycroft Terrace NCT	Manatee	50022059
Gamble Creek	Tract 501	Manatee	492024059
Lakes of Mt. Dora	Tracts C, D, PB 57, PG47-56 ORB 4153	Lake County	3847953
Loch Leven	Lot 125, Phase 5	Lake County	3833830
	60 N of SR44, Less CR231 [Right of Way]	Sumter	C33-008

32. Respondent's 2013 Form 1 had approximately 35 listings of disclosable properties. In comparison, the 2013 Form 1X had approximately 740 listings of disclosable properties.

RESPONDENT'S 2014 FORM 1

33. On June 26, 2015, Respondent filed his 2014 CE Form 1, "Statement of Financial Interests" (2014 Form 1).

34. On April 9, 2019, Respondent filed an "Amendment to Statement of Financial Interests," for the year 2014 (2014 Form 1X).

35. On his 2014 Form 1, Respondent failed to check the box that indicates whether he is using comparative or dollar value thresholds as his method for calculating reportable interests. Respondent corrected this omission by checking the box indicating that he was using “Comparative (Percentage) Thresholds” as his manner for calculating reportable interests on his 2014 Form 1X.

36. Respondent also did not list four primary sources of income on his 2014 Form 1: Cargor CM Property Investments, Inc; Estates at Twin Rivers, LLC; Medallion Home at Mt. Dora, LLC; and Tampa Bay Equity Fund, LLC. These were included on his 2014 Form 1X.

37. Additionally, Respondent failed to list three secondary sources of income on his 2014 Form 1: Riva Trace, LLC; Sun Coast Title Company, LLC; and Medallion Home at Gamble Creek, LLC. These were included on his 2014 Form 1X.

38. For the vast majority of properties listed on the 2014 Form 1, Respondent did not list a location or description of his reportable real property in a manner that would be sufficient to enable anyone who looks at the form to identify the property.

39. Instead, he listed his real estate disclosures as follows:

- Multiple Lots at the Inlets, Bradenton, Florida
- Multiple Lots at Riva Trace, University Park, Florida
- Multiple Lots at Lakes of Mt. Dora, Mt. Dora, Florida
- Multiple lots Jarman Industrial Park, Bradenton
- Multiple lots & houses at River Plantation, Parrish
- Multiple lots & houses at Gamble Creek, Parrish
- Multiple lots in Twin Rivers, Manatee County
- Building 2212 58th Avenue E, Bradenton
- Mandarin Grove subdivision, Manatee County
- 20 acres Buckeye Road & Grass Farm Rd, Palmetto
- Lots & house in River Woods subdivision, Parrish
- 35 acres 181 Rye Road, Bradenton
- 23 acres 8923-55 E 25 Street, Parrish
- 80 acres Grass Fann Rd, Manatee County
- 200 acres at Cross Creek Subdivision
- 8200 US 30 I North, Ellenton
- Acreage at 154 71 SR 62, Parrish
- Multiple Lots & Houses in Enclave 14641 Upper Manatee River Rd, Bradenton
- 55 Crystal Lakes, Palmetto
- 4831 Whitfield Avenue, Bradenton

6 BK 8 University Parkway, Sarasota  
5335 Wingate Rd, Myakka Woods  
110 acres SR 44, Sumter County  
1000 acres 1403 SR 44, Wildwood  
Building 1651 Whitfield Ave, Sarasota  
Interest in Long Bar Pointe 500 acres  
Interest in 933 Acres Buckeye Road  
2 Lots in Foxbrook  
Upper Manatee River Rd & SR 64 288 acres  
90 Acres Ft. Hamer & Golf Course Rd  
Land on Tallevast Rd University Village  
533 acres on SR 64, Myakka  
56 Acres Mulholland & Ft. Hamer  
25 Acres Rye Rd, Manatee  
23 Acres Waterline Rd, Manatee

40. On his 2014 Form 1X, as with his 2013 Form 1X, Respondent included the county, property ID number, and either an address, parcel or tract numbers, “book and page” numbers or portions of legal descriptions for each of the properties described above.

41. Respondent’s 2014 Form 1 had approximately 35 listings of disclosable properties. In contrast, Respondent’s 2014 Form 1X had approximately 640 listings of disclosable properties.

#### RESPONDENT’S 2015 FORM CE-1

42. On July 6, 2016, Respondent filed his 2015 CE Form 1, “Statement of Financial Interests” (2015 Form 1).

43. On April 9, 2019, Respondent filed an “Amendment to Statement of Financial Interests” for the year 2015 (2015 Form 1X).

44. The 2015 Form 1 indicated in the section titled “DISCLOSURE PERIOD” that Respondent was reporting for the calendar year ending on December 31, 2015.

45. The 2015 Form 1 improperly listed Medallion Home at Gamble Creek, LLC, as a primary source of income. This was corrected on the 2015 Form 1X.

46. As with the 2013 and 2014 Form 1s, in his 2015 Form 1, Respondent provided general descriptions of real property, but failed to provide a location or description in

a manner that would be sufficient to enable anyone who looked at the form to identify what property Respondent (or his businesses) owned.

47. Instead, he listed the real estate disclosures as follows:

Multiple Lots at the Inlets, Bradenton, Florida  
Multiple Lots & Houses at Riva Trace, University Park, Florida  
Multiple Lots & Houses at Lakes of Mt Dora, Mt. Dora, Florida  
Multiple Lots Jarman Industrial Park, Bradenton  
Multiple Lots & Houses at River Plantation, Parrish  
Multiple Lots & Houses at Gamble Creek, Parrish  
Multiple Lots, Houses & Acreage in Twin Rivers, Manatee County  
Building 2212 58th Avenue E, Bradenton  
Mandarin Grove subdivision, Manatee County  
20 acres Buckeye Road & Grass Farm Rd, Palmetto  
Lots & House in River Woods subdivision, Parrish  
35 acres 181 Rye Road, Bradenton  
23 acres 8923-55 E 25 Street, Parrish  
80 acres Grass Farm Rd, Manatee County  
200 acres at Cross Creek Subdivision  
8200 US 301 North, Ellenton  
Acreage at 15471 SR 62, Parrish  
Multiple Lots & Houses in Enclave, Bradenton  
4831 Whitfield Avenue, Bradenton  
Lot on University Parkway, Sarasota  
1100 acres SR 44, Sumter County  
1000 acres 1403 SR 44, Wildwood  
Building 165 1 Whitfield Ave, Sarasota  
Interest in Aqua Development 529 acres  
Interest in 933 Acres Buckeye Road  
2 Lots in Foxbrook  
Upper Manatee River Rd & SR 64 288 acres  
90 Acres Ft. Hamer & Golf Course Rd  
Multiple Lots & Houses in University Village, Sarasota  
533 acres on SR 64, Myakka  
56 Acres Mulholland & Ft. Hamer  
23 Acres Rye Estates & S Acres on Rye Road, Manatee  
Interest in 175 Office Park, Vacant Land  
Multiple Lots at Cross Creek Subdivision  
6 Acres on 63rd Ave E, Bradenton  
Lots on Walnut Avenue, Palmetto  
Lots in Wellon Ranch Estates, Manatee

48. In his 2015 Form 1X, as with his 2013 and 2014 Form 1Xs, Respondent included the county, property identification number, and either an address, parcel or tract number, “book and page” numbers, or portions of legal descriptions for the properties described above.

49. Respondent’s 2015 Form 1 had approximately 35 listings of disclosable properties. In contrast, Respondent’s Form 2015 1X had approximately 640 listings of disclosable properties.

#### RESPONDENT’S REAL PROPERTIES

50. The properties disclosed on the Form 1Xs are all owned by Respondent (or his businesses) and are not Respondent’s vacation homes or residences.

51. All of the properties eventually disclosed in the Form 1Xs were subject to disclosure on the Form 1s for the corresponding years.

52. Respondent admitted that many of the properties eventually disclosed are located in the Southwest Florida Water Management District, and that he served on the governing board for that District for 2013 and 2014.

53. Respondent also admitted that a citizen who wanted to ascertain which parcels Respondent had an interest in would need to review the Form 1s and then take additional steps to figure out which parcels were owned by him (or his businesses).

54. For the property located in an established subdivision, Respondent suggested that a citizen who wanted to ascertain what property he owned could drive to the subdivision and look for a “sign” indicating that he (or one of his businesses) owned the property. Respondent acknowledged that signs are not always present.

55. There was no evidence as to how a citizen could locate Respondent’s real property that was not in a subdivision. For example, there was no evidence of how a citizen could ascertain how many or what “[l]ots on Walnut Avenue, Palmetto” or which “110 acres SR 44, Sumter County” were owned by Respondent.

### ULTIMATE FINDINGS OF FACT

56. On his 2013 and 2014 Form 1s, Respondent did not indicate whether he used comparative or dollar value thresholds as his method for calculating reportable interests.

57. On his 2013 Form 1, Respondent failed to list one or more primary sources of income.

58. On his 2013 Form 1, Respondent failed to list multiple secondary sources of income.

59. On his 2014 Form 1, Respondent failed to disclose multiple sources of income.

60. On his 2014 Form 1, Respondent failed to list multiple secondary sources of income.

61. On his 2013, 2014 and 2015 Form 1s, Respondent failed to adequately list the location or description of non-residential and non-vacation real property in this state, in which he had a reportable interest. No one reviewing the Form 1s could discern the location of the properties in which Respondent had an interest without extensive follow-up and/or additional research.

### CONCLUSIONS OF LAW

62. DOAH has jurisdiction over the parties and the subject matter of this proceeding. § 120.57(1), Fla. Stat.

63. Section 112.322 authorizes the Commission on Ethics to conduct investigations and to make public reports on complaints concerning violations of part III, chapter 112, Florida Statutes (the Code of Ethics).

64. During the relevant time period (2013 through 2015), Respondent was subject to the requirements of the Code of Ethics because he served as a member of several state, regional and local governing boards.

65. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceedings. *Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778 (Fla. 1st DCA 1981); *Balino v. Dep't of Health and Rehab. Serv.*, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the



Commission, through its Advocate, that is asserting that Respondent violated the Code of Ethics and should be penalized.

66. In cases where the Commission seeks penalties against a public officer or employee require proof of the alleged violations by clear and convincing evidence. *See Latham v. Fla. 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 alleged violations is on the Commission.

67. As noted by the Supreme Court of Florida:

[C]lear 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.*

68. Contrary to Respondent's assertion, the Commission charged Respondent with violations of section 112.3145, not with a violation of a rule. Section 112.3145 provides:

(3) The statement of financial interests for state officers, specified state employees, local officers, and persons seeking to qualify as candidates for state or local office shall be filed even if the reporting person holds no financial interests requiring disclosure, in which case the statement shall be marked "not applicable." Otherwise, the statement of financial interests shall include, at the filer's option, either:

(a)1. All sources of income in excess of 5 percent of the gross income received during the disclosure period by the person in his or her own name or by any other person for his or her use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of income. The person reporting shall list such sources in descending order of value with the largest source first;

2. All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he or she received an amount which was in excess of 10 percent of his or her gross income during the disclosure period and which exceeds \$1,500. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting;

3. *The location or description of real property in this state, except for residences and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and a general description of any intangible personal property worth in excess of 10 percent of such person's total assets. For the purposes of this paragraph, indirect ownership does not include ownership by a spouse or minor child; and*

4. Every individual liability that equals more than the reporting person's net worth; or

(b)1. All sources of gross income in excess of \$2,500 received during the disclosure period by the person in his or her own name or by any other person for his or her use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of income. The person reporting shall list such sources in descending order of value with the largest source first;

2. All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he or she received gross income exceeding \$5,000

during the disclosure period. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting;

3. *The location or description of real property in this state, except for residence and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and a general description of any intangible personal property worth in excess of \$10,000. For the purpose of this paragraph, indirect ownership does not include ownership by a spouse or minor child; and*

4. Every liability in excess of \$10,000.

A person filing a statement of financial interests shall indicate on the statement whether he or she is using the method specified in paragraph (a) or paragraph (b). (emphasis added).

69. There is no dispute that Respondent was subject to the requirements of the Code of Ethics and was required to file a Form 1 for 2013, 2014, and 2015. There is also no dispute that Respondent was required to provide the location or description of all of his (or his businesses') real property located in Florida.

70. As explained above, Respondent did not indicate the manner of calculating reportable interests, accurately disclose sources of income, nor did he accurately disclose real property. Respondent failed to accurately disclose these items as required by section 112.3145, on his 2013 Form 1.

71. Respondent did not indicate the manner of calculating reportable interests, nor did he accurately disclose sources of income and real property as required by section 112.3145, on his 2014 Form 1.

72. Respondent did not accurately disclose his interests in real property, as required by section 112.3145, on his 2015 Form 1.

73. The Advocate proved by clear and convincing evidence that Respondent violated section 112.3145 when he filed his 2013, 2014, and 2015 Form 1s.

Respondent's subsequent attempt to cure these deficiencies by filing Form 1Xs on April 9, 2019, failed because they were untimely. In addition, the filing of the Form 1Xs is not considered a mitigating factor in this case because they were filed after the Complaint that triggered this proceeding. See § 112.3144(9), Fla. Stat. (2013).<sup>8</sup>

74. Respondent asserts no violation should be found because these errors were unintentional, no one was actually harmed, and one should not have to hire a lawyer to serve on a public board. Even if true, these facts and opinions do not support a dismissal of the Commission's disciplinary action.

75. As an initial matter, the undersigned could find no authority to establish that a violation of section 112.3145 requires proof that a citizen actually be misled by the financial disclosure form. Instead, as suggested by section 112.3144(9), it is enough that "the public was deprived of access to information to which it was entitled."

76. Furthermore, even technical failures, such as the checking of a box, are considered violations. *Marcos Villanueva v. State of Fla, Comm'n on Ethics*, 286 So. 3d 389 (Fla. 1st DCA 2020). In *Villanueva*, the Commission found the public official to have violated section 112.3145, when he failed to check the box indicating the manner of calculating his reportable interests on his Form 1. On appeal, the official argued that his failure to state the manner of calculating his reportable interests (i.e., "check the box") was *de minimus*. The Third District Court of Appeal

---

<sup>8</sup> This section states:

The commission shall adopt rules and forms specifying how a person who is required to file full and public disclosure of financial interests may amend his or her disclosure statement to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

The language of this subsection corresponds to section 112.3144(10), Florida Statutes (2014 and 2015), and section 112.3144(13), Florida Statutes (2021).

affirmed the Commission's final order finding the public official had violated the statute.

77. Here, Respondent not only failed to check a box, he also failed to disclose multiple sources of income and adequately disclose the locations of hundreds of parcels of property in which he had an interest.

78. Finally, the purpose of a financial disclosure is to allow citizens to monitor their public officials and employees for any conflicts of interests that may arise. It deters corruption and increases the public's confidence in the government. *See* § 112.311(1), Fla. Stat. ("The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist."). Another purpose, however, is to encourage qualified and willing citizens to serve the public. *See* § 112.311(2), Fla. Stat. ("It is also essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve.").

79. It is not necessary to hire an accountant or an attorney to serve on a public board, if one reads and follows the Form 1 instructions. Although it was not necessary, it was totally reasonable for Respondent to have a legal or financial professional review his disclosure filings, given the number and complicated nature of his businesses and real estate holdings.

80. Respondent failed to comply with the disclosure requirements in the Code of Ethics.

#### RULE CHALLENGE

81. The Commission is authorized to create the appropriate form for financial disclosures. Section 112.3145(7), states: "Forms for compliance with the disclosure requirements of this section ... shall be created by the commission."<sup>9</sup>

---

<sup>9</sup> *See* § 112.3145(6), Fla. Stat. (2013); § 112.3145(7), Fla. Stat. (2014 and 2015); and § 112.3145(8), Fla. Stat. (2021).

82. The Commission promulgated the Form 1 used by Respondent in 2013, 2014, and 2015 for the disclosure of financial interests through the adoption of Florida Administrative Code Rule 34-8.202 (the Rule). *See* § 112.322(9) Fla. Stat.

83. Form 1 includes a section for disclosure of real property (as required by section 112.3145 (3)(a)3. and (3)(b)3.) that requires, in part, the disclosure of certain real property owned by the filer. The instructions for disclosing a financial interest in real property elaborate on how to meet the statutory requirement:

The location or description of the property should be sufficient to enable anyone who looks at the form to identify the property. A street address should be used, if one exists.<sup>10</sup>

84. Respondent claims that the instruction for disclosure of real property in Part C of Form 1 constitutes an invalid exercise of delegated legislative authority because it enlarges, modifies, or contravenes the specific provisions of the law that the instructions implement. Specifically, Respondent argues that because sections 112.3145(3)(a)3. and 112.3145(3)(b)3., do not mention or require a filer to identify property by a street address, these instructions adopted by the Rule are invalid. The undersigned rejects this argument.

85. The rulemaking authority for the challenged rule is in section 112.322(9)(b), which provides:

(9) The commission is authorized to make such rules not inconsistent with law as are necessary to carry out the duties and authority conferred upon the commission by s. 8, Art. II of the State Constitution or by this part [Chapter 112, Part III, Florida Statutes]. Such rules shall be limited to:

\* \* \*

(b) Rules interpreting the disclosures and prohibitions established by s. 8, Art. II of the State Constitution and by this part.

---

<sup>10</sup> This instruction is the same in the 2013, 2014, and 2015 forms.

86. The law implemented by the Rule, sections 112.3145(3)(a)3. and 112.3145(3)(b)3., specifically requires the disclosure of “the location or description of real property” in which Respondent has an interest (except for residences and vacation homes).

87. The rulemaking authority in section 112.322(9)(b) allows the Commission to adopt rules interpreting the disclosures in the Code of Ethics. The Commission’s language requiring that the location or description of the disclosed property “should be sufficient to enable anyone who looks at the form to identify the property” indicates the focus is on whether Respondent’s disclosures sufficiently enable a citizen to identify his properties. They did not.

88. The Commission also alternatively accepted property descriptions listed as tract numbers, legal descriptions, and by “book and page.” All of these methods, especially with the addition of the county and property ID number, would allow a citizen to ascertain the location of the property described without extraordinary methods.

89. The language of an adopted rule need not, and should not, be identical to the law implemented for it to be a valid. *Sierra Club v. St. Johns River Water Mgmt. Dist.*, 816 So. 2d 687, 692 (Fla. 5th DCA 2002)(affirming that proposed rule did not violate section 120.52(8)(c)). Agencies, such as the Commission, are permitted and even required to interpret the statutes they implement. § 120.52(8), Fla. Stat. (“An agency may adopt only rules that implement or *interpret* the specific powers and duties granted by the enabling statute.”) (emphasis added). “[U]se of the term ‘interpret’ suggests that a rule will be more detailed than the applicable enabling statute.” *SW Fla. Water Mgmt. Dist. v. Save the Manatee*, 773 So. 2d 594, 599 (Fla. 1st DCA 2000).

90. When a term in a statute is not defined, the rules of statutory construction allow courts to interpret the term according to its ordinary meaning. *Save the Manatee*, 773 So. 2d at 599 (“In the absence of a special statutory definition, we may assume that the word ‘specific’ was used according to its ordinary dictionary definition.”). The interpretation must also be consistent with the purpose of the law

implemented. *See Board of Podiatric Med. v. Fla. Medical Ass'n*, 779 So. 2d 658, 660 (Fla. 1st DCA 2001) (considering the consistency in purpose between terminology in a statute and rule, and validating the rule based on that consistency).

91. The Rule adopts a reasonable interpretation of the statutory requirement to disclose the “location or description of real property,” one which is consistent with the ordinary meaning of the phrase chosen by the Legislature. The ordinary meaning of “location or description of property” includes an address of the property. Rational people would use a street address, if it existed, to identify the location of property.

92. The Commission’s interpretation is also consistent with the purpose of the law implemented, which is to enable the public to locate the property listed on the Form 1. Sections 112.3145(3)(a)3. and 112.3145(3)(b)3. clearly state that if reportable property is owned by the filer, the Legislature wants its location identified.

93. In asking for the address if available, the Form 1 instructions employ an ordinary and usual method for providing a “location or description,” which is consistent with the purpose of the statute, and does not enlarge, modify, or contravene the provision of the law implemented.

94. The Rule implementing the instructions on Form 1 is a valid exercise of the Commission’s delegated legislative authority.

#### PENALTY

95. The core penalties available for this matter involving violations of section 112.3145 include public censure and reprimand, and a civil penalty not to exceed \$10,000 per violation. *See* § 112.317(1)(a) or (d), Fla. Stat.

96. The Advocate seeks to impose the penalty of public censure, reprimand, and a civil penalty of \$15,000 (\$5,000 per year) against Respondent. Although the public censure and reprimand are appropriate, the requested civil penalty is excessive.

97. The Advocate cites to numerous Commission cases involving inaccurate disclosures and violations of section 112.3145 that have recommended a civil penalty of \$500:

Numerous Commission on Ethics cases involve the violation of Section 112.3145, Florida Statutes. The



Commission issued a Final Order and Public Report in *In re: Thomas L. Clyde*, where upon it recommended a \$500 civil penalty along with public censure and reprimand when it found that the respondent filed an inaccurate Form 1 regarding his failure to accurately list his primary sources of income. The Commission issued a Final Order and Public Report in *In Re: Theodore R. Schindler, II*, where upon it recommended a \$500 civil penalty along with public censure and reprimand when it found that the respondent filed an inaccurate CE Form 1 regarding his failure to indicate his chosen manner of calculating reportable interests and accurately list a secondary source of income. The Commission issued a Final Order and Public Report in *In Re: Marcos Villanueva*, whereupon it recommended a \$500 civil penalty along with public censure and reprimand when it found that the respondent filed inaccurate CE Form 1 and 1X regarding his failure to indicate his chosen manner of calculating reportable interests.

*See* Pet. PRO, p. 25.

98. Additionally, in the recent case of *In Re: R.C. "Rick" Lussy*, Case No. 21-3687 (Fla. DOAH Mar. 23, 2022; final order pending), the Administrative Law Judge recommended a \$500 civil penalty where a candidate for public office filed an inaccurate "CE Form 6: Full and Public Disclosure of Financial Interests" and violated Article II, Section 8, Florida Constitution and section 112.3144.

99. Here, Respondent was not an elected official, paid employee, or candidate for office. Rather, he voluntarily sat on numerous public boards. Although he did fail to disclose sources of income, he at least attempted to provide a location or description of his properties, albeit in an inadequate way. Moreover, Respondent was remorseful at the hearing and admitted he had been "dumb and happy" regarding the filings as he was unaware they were being filed the wrong way. Once these errors were brought to his attention, he corrected them.

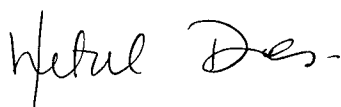
100. The undersigned finds a \$500 civil penalty per inaccurate Form 1 is appropriate. Although a low penalty, the violations occurred more than five years ago, and a \$1,500 civil penalty is enough to deter any further violations.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is:

RECOMMENDED that a final order and public report be entered finding that Respondent, Carlos Beruff, violated Section 112.3145, Florida Statutes, on three separate occasions by filing an inaccurate Form 1 in 2013, 2014, and 2015; and recommending the imposition of public censure, reprimand and a civil penalty of \$1,500 (\$500 for each inaccurate Form 1).

DONE AND ENTERED this 27th day of May, 2022, in Tallahassee, Leon County, Florida.



---

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

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of May, 2022.

COPIES FURNISHED:

Millie Wells Fulford, Agency Clerk  
Florida Commission on Ethics  
Post Office Drawer 15709  
Tallahassee, Florida 32317-5709

Melody A. Hadley, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

Elizabeth A. Miller, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

Caroline Marsh Klancke, General Counsel  
Florida Commission on Ethics  
Post Office Drawer 157209  
Tallahassee, Florida 32317-5709

Brennan Donnelly, Esquire  
Messer Caparello, P.A.  
2618 Centennial Place  
Tallahassee, Florida 32308

Marlene Katherine Stern, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399

Robert Antonie Milne, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

Mark Herron, Esquire  
Messer Caparelo, P.A.  
2618 Centennial Place  
Post Office Box 15579  
Tallahassee, Florida 32317

C. Christopher Anderson, III,  
Executive Director  
Florida Commission on Ethics  
Post Office Drawer 15709  
Tallahassee, Florida 32317-5709

Advocates for the Commission  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.