

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: CHERYL L. THOMAS-HUGHES, Case No. 18-3273EC

Respondent.

RECOMMENDED ORDER

On August 31, 2018, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Miami and Tallahassee, Florida.

APPEARANCES

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

For Respondent: Cheryl L. Thomas-Hughes, pro se
3188 Northwest 67th Street
Miami, Florida 33147

STATEMENT OF THE ISSUE

The issue is whether Respondent willfully has failed or refused to file a CE Form 1, Statement of Financial Interests (Form 1), for 2015, in violation of section 112.3145(8)(c), Florida Statutes (2018).

PRELIMINARY STATEMENT

On March 5, 2018, presumably pursuant to an order from the Florida Commission on Ethics (Commission), the Commission's

investigator issued a Report of Investigation stating that Respondent failed to file her 2015 Form 1 prior to accruing the maximum automatic fine, as described below, and could not explain why she had not filed it timely. On March 15, 2018, the Advocate issued a Recommendation that Respondent violated section 112.3145(8)(c) by willfully failing to file the 2015 Form 1 prior to accruing the maximum automatic fine and filing it instead on August 31, 2017.

On April 25, 2018, the Commission entered an Order Finding Probable Cause, which directs that a public hearing be conducted "as to whether the Respondent violated Section 112.3145(8)(c), Florida Statutes, by willfully failing or refusing to file" the 2015 Form 1. By letter dated June 25, 2018, the Commission transmitted the file to DOAH with a request that an administrative law judge conduct the public hearing for the Commission.

At the hearing, the Advocate called four witnesses, including Respondent, and offered into evidence 20 exhibits: Advocate Exhibits 2 through 3, 5 through 14, 17 through 22, 24, and 26. Having already testified in the Advocate's case, Respondent called no witnesses and offered no exhibits into evidence. All exhibits were admitted, but Advocate Exhibit 24 was admitted not for the truth of its contents, except for statements of Respondent qualifying as exceptions to hearsay.

The court reporter filed the transcript on October 3, 2018. At the conclusion of the hearing, at the request of the Advocate, the parties agreed that the deadline for filing any proposed recommended orders would be October 5, 2018, regardless of when the transcript was filed. The Advocate filed its proposed recommended order on October 5, 2018.

FINDINGS OF FACT

1. Respondent is presently employed by Miami-Dade County as a Purchasing Specialist in the Water and Sewer Department. She has worked for Miami-Dade County continuously since 1997 when she was hired as a clerical worker in the Water and Sewer Department. She assumed procurement duties when she earned a promotion in 2006 to her present position. In 2011, changes in internal operations in the Water and Sewer Department resulted in the assignment to Respondent of spending authority of up to \$25,000, and Respondent has filed Forms 1, evidently without litigation, for 2011, 2012, 2013, 2014, and 2016.

2. In her job, Respondent routinely documents whether county vendors have performed their contractual obligations. When a vendor fails to perform, Respondent contacts the vendor in an attempt to secure performance. If the vendor's nonperformance persists, Respondent places the vendor on probation. Prior to her employment with Miami-Dade County, Respondent worked for 17 years as a clerical worker with AT&T.

3. By May 15, 2016, the Commission transmitted to the Miami-Dade County Supervisor of Elections a list of persons, including Respondent, who were required to file a Form 1 for 2015 by the deadline of July 1, 2016. On February 26, March 25, and April 22, 2016, the Supervisor of Elections emailed Respondent reminders to file timely her 2015 Form 1, and Respondent received each of these email reminders. On May 27, 2016, the Supervisor of Elections mailed Respondent a detailed letter reminding her of the obligation to file a Form 1 by July 1, supplying the necessary form, and indicating how to file the completed form. Respondent received this letter.

4. Respondent testified that, in the spring of 2016, she was under considerable stress from a marital separation that had commenced when her husband had moved out of the marital home in February 2015. Undoubtedly, Respondent was distraught over the prospect of the failure of a marriage of 35 years' duration, but she timely filed her 2014 Form 1 shortly after the separation had taken place.

5. Three factors are important for determining whether Respondent's failure to file from July 2, 2016, through August 30, 2017, was willful. First, Respondent's employment history includes many years of clerical work and 12 years of managing contracts for the Water and Sewer Department. Clearly, Respondent understands the importance of paperwork, knows how to

complete and file forms, and recognizes that there are consequences for failing to file completed forms timely. Second, Respondent had filed four Forms 1 for the four years preceding 2015, so she was well aware of her annual duty to file this financial disclosure and of the general timeframe for when the form was due.

6. Third, the Commission and Respondent's Supervisor of Elections showered Respondent with notices to file the 2015 Form 1. In addition to the above-noted communications prior to July 1, on July 29, 2016, the Supervisor of Elections mailed Respondent, by certified mail, a detailed letter advising that she was delinquent in filing a Form 1, but could file within a grace period that ended on September 1, 2016. This letter warns that a fine of \$25 per day, up to \$1500, would begin to accrue if the form is not filed by September 1 and, if Respondent fails to file the form within 60 days after the expiration of the grace period on September 1, "you will also be subject to penalties provided in Florida Statute 112.317." Respondent received this delinquency notice.

7. On August 17, 2016, the Commission issued a courtesy notice, in the form of a bright orange postcard, advising Respondent that the grace period for filing the 2015 Form 1 would expire on September 1, 2016, and warning that she would accrue a fine of \$25 per day (Automatic Fine) until she filed the form or

accrued a total of \$1500 in fines (Maximum Automatic Fine). On September 7, 2016, the Commission sent a courtesy letter advising Respondent that the grace period had expired on September 1, and the Automatic Fine was accruing and would continue to accrue until it reached the Maximum Automatic Fine. Respondent received these courtesy communications.

8. On March 2, 2017, the Commission issued to Respondent a Notice of Assessment of Automatic Fine, which is the Maximum Automatic Fine. The notice advises how to appeal the Maximum Automatic Fine and even identifies acceptable grounds for setting aside the fine. The notice concludes that, if Respondent failed to appeal or pay the Maximum Automatic Fine within 30 days, a default order would be issued that could refer the matter to a collection agency or her employer for withholding a portion of her salary until the fine was paid. The notice also warns that the Commission could impose "[a]n additional civil penalty . . . if . . . a complaint is filed against you pursuant to Section 112.324, Florida Statutes." Respondent received this notice.

9. On May 23, 2017, the Commission issued a Final Notice of Assessment of Automatic Fine for Failure to Timely File Form 1, Statement of Financial Interests. This letter advises that Respondent had waived her right to appeal the Maximum Automatic Fine and restates the rights of the Commission to obtain payment of the fine. Respondent received this notice.

10. On August 2, 2017, the Commission issued a Notification of Issuance of Default Final Order advising Respondent that, if she failed to pay the Maximum Automatic Fine by September 7, 2017, the Commission would refer the matter to a collection agency. This letter warns that a failure to pay or arrange to pay the fine by the deadline would result in a copy of the Default Final Order being sent to Respondent's agency head. Respondent received this notice.

11. On August 31, 2017, Respondent filed her 2015 and 2016 Forms 1. Based on the above-cited facts, Respondent's failure to file the 2015 Form 1 from July 2, 2016, through August 30, 2017, was intentional and, thus, willful.

12. Addressing solely the collection of the Maximum Automatic Fine, on September 7, 2017, the Commission sent Respondent a letter stating that a recent statutory change required the Commission to notify her agency head to implement withholding from her salary. On October 11, 2017, the Commission sent a letter to the Finance Manager of the Miami-Dade County Finance Department. The letter states that, "[t]o timely resolve this matter," which refers to the Maximum Automatic Fine, the Commission requested that the manager withhold a portion of Respondent's salary and remit it to the Commission. The Finance Manager implemented salary withholding, typically \$174.11 per

month, as of November 6, 2017, and the Commission received the final payment on March 6, 2018, for a total of \$1500.

13. None of Respondent's Forms 1 for the years 2011 through 2016 discloses financial interests above the disclosure thresholds. At this point, as she explained tearfully at the hearing, Respondent is merely trying to keep her job so she can work a few more years and retire with a pension on which she can live.

CONCLUSIONS OF LAW

14. Typically, DOAH would have jurisdiction of a proceeding under section 112.3145(8)(c), pursuant to sections 120.569 and 120.57(1). However, as explained below, because the Commission has not received a third party complaint invoking its jurisdiction and Respondent filed her 2015 Form 1 prior to the Commission's taking action in this case, the Commission lacked the authority to initiate the investigation, issue the Order Finding Probable Cause, and transmit the file to DOAH to conduct the public hearing and lacks the authority to issue a final order determining that the failure to file was willful and recommending the dismissal of Respondent.^{1/}

15. The burden of proof is on the Advocate to prove the material allegations by clear and convincing evidence. For the purpose of establishing the proper standard of proof, section 112.3145(8)(c) is a penal statute, Latham v. Fla. Comm'n on

Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997), for which the standard of proof is clear and convincing evidence. § 120.57(1)(j); Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

16. By July 1 of each year, each "local officer," among other classes of persons, "shall file a statement of financial interests," § 112.3145(2)(b), even if there are no financial interests to disclose. § 112.3145(3). Respondent is required to file this financial disclosure, which is made on a Form 1, because, as defined in section 112.3145(1)(a)3., she is a "local officer," which includes a "purchasing agent" with the authority, on behalf of a political subdivision of the state, to make any purchase in excess of the Category One threshold of \$20,000 set forth in section 287.017.

17. The Commission and local Supervisor of Elections have satisfied the various procedural requirements imposed upon them regarding Respondent's filing of the 2015 Form 1. By May 1, the Commission must compile a list of all local officers, as well as state officers and specified employees, who are also required to file a Form 1. § 112.3145(7)(a)1. By May 15, the Commission must provide to the Supervisor of Elections a mailing list of all local officers required to file a Form 1. § 112.3145(7)(a)2. At least 30 days prior to July 1, the Commission and the Supervisor of Elections must notify each person required to file a Form 1 of

the deadline and forms. § 112.3145(7)(b). Within 30 days after July 1, the Commission and the Supervisor of Elections must send a delinquency notice by certified mail to each person who has failed to file. § 112.3145(7)(c).

18. At all times from July 2, 2016, through August 30, 2017, Respondent's failure to file her 2015 Form 1 was intentional^{2/} and, thus, willful.

19. The proper construction of section 112.3145(8)(c) is facilitated by identifying the four statutory periods following a failure to file a Form 1 by July 1. First, a filing from July 2 through September 1 subjects the filer to no penalties, so such a filing is the equivalent of a filing by July 1 (Grace Period). § 112.3145(7)(c).^{3/}

20. Second, from September 2 through October 31, a \$25 Automatic Fine accrues each day that the Form 1 remains unfiled, culminating on October 31 in the Maximum Automatic Fine of \$1500 (Maximum Automatic Fine Period). § 112.3145(7)(c).^{4/} The Automatic Fine is automatic because the fine accrues without any action by the Commission, although the Commission has the authority to waive the Automatic Fine, in whole or in part, if the nonfiler can show "good cause" in the form of "unusual circumstances" for failing to file. § 112.3145(7)(f)3.

21. A filing during the Maximum Automatic Fine Period is subject to a "civil penalty,"^{5/} if a third party files a

complaint. Although section 112.3145(7)(c) is silent on the matter, section 112.3145(7)(f) provides for a "civil penalty . . . if the statement is filed more than 60 days after the deadline [July 1] and a complaint is filed, as provided in s. 112.324."

22. After the expiration of the Maximum Automatic Fine Period, section 112.3145(7)(c) provides for the "penalties provided in s. 112.317,"^{6/} if "the person has failed to file the statement within 60 days after September 1" and a complaint is filed. Also, after the expiration of the Maximum Automatic Fine Period, the Commission is required to proceed under section 112.3145(8)(c), which is the provision at issue in this case and is discussed in detail below. The third period ends when the Commission concludes a section 112.3145(8)(c) proceeding with the issuance of a final order finding that the failure to file was willful, as explained below. The fourth period follows the issuance of the final order.

23. As seen above, disregarding third party complaints, the legislative scheme for the annual filing of financial disclosure slowly applies pressure on the person required to file. In order, the statutory scheme comprises nudging by a series of notices, the setting of a false deadline followed by an actual deadline at the end of the Grace Period, and the imposing of a

relatively modest Automatic Fine, which the Commission may waive for good cause.

24. Alternatively, the legislature could have enacted a penalty of dismissal for a willful failure to file by July 1. Such a legislative choice might have produced more timely filings, assuming that a harsher penalty would not have exacerbated procrastination among some filers, but would likely have produced more litigation, as late filers would have contested the willfulness finding in a struggle to keep their jobs, and might have produced fewer filings, as late filers, after missing the July 1 deadline, might have abandoned public employment without ever filing. By choosing instead a statutory scheme of nudges, a false deadline, and the imposition of a modest daily fine, the legislature opted for the filing of financial disclosure, even if late, over the dismissal of the tardy filer. By authorizing third party complaints after the Grace Period, though, the legislature left it to the public to initiate a proceeding to determine if, during the second and third periods, a nonfiling merited a more punitive remedy.

25. By their reading of section 112.3145(8)(c), the Commission and Advocate suggest a jarring shift in legislative policy at the conclusion of the Maximum Automatic Fine Period: no longer favoring filing, even if late, over the punishment of the tardy filer, the legislature, according to the Commission and

Advocate, mandated the Commission to obtain the dismissal of the employee, even if the employee already had filed prior to the Order Finding Probable Cause or final order determining willfulness. The correct reading of section 112.3145(8)(c) reveals that the legislature continued to place a premium on the filing of financial disclosure over the punishment of the tardy filer. Unfortunately, the meaning of section 112.3145(8)(c) is obscured by its failure to refer to filing intervals with the same clarity as does section 112.3145(7)(c) and (f), which refers to a failure to file "within 60 days after September 1" and a filing "more than 60 days after [July 1]."^{7/}

26. Section 112.3145(8)(c) states that, if a "person holding public office or public employment fails or refuses to file a [Form 1] for any year in which the person received notice from the commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section, regardless of whether the fine imposed was paid or collected," the Commission "shall" investigate and conduct a public hearing on "whether the person's failure to file is willful." If the Commission determines that the person "willfully failed to file a statement of financial interests," the Commission "shall enter an order recommending that the officer or employee be removed from his or her public office or public employment." (Emphasis added.)

27. Section 112.3145(8)(c) applies to the person who "fails or refuses to file" after the accrual of the Maximum Automatic Fine, implying the necessity of an ongoing failure to file that continues after the end of the Maximum Automatic Fine Period. The ensuing investigation and public hearing under section 112.3145(8)(c) are to determine if the person's failure to file "is" willful, implying the impossibility of such a finding if the filing already has taken place, even if after the end of the Maximum Automatic Fine Period. In contrast to section 112.3145(7)(c) and (f), where the issue was whether a person had failed to file by the end of a specified interval, section 112.3145(8)(c) identifies the issue as whether the person has still not filed, even after the end of the Maximum Automatic Fine Period.

28. But what is the point at which it is to be determined that a person still has not filed? Section 112.3145(8)(c) answers this question by switching from the present tense, as quoted above, to the past tense in the final sentence: "if the commission determines that the person willfully failed to file," the Commission must recommend the removal of the employee from public employment. The use of the past tense signals that the failure to file is no longer ongoing, but is now complete, as measured from the point at which the Commission determines willfulness in its final order. The final sentence specifies

that the nonfiling issue in section 112.3145(8)(c) is whether the person failed to file by the end of the third period--i.e., the issuance of the final order. For these reasons, under section 112.3145(8)(c), a filing during the third period avoids liability, and a filing during the fourth period is the same as no filing at all.

29. Administrative law judges have issued recommended orders in three cases involving alleged violations of section 112.3145(8)(c), during the four years that the provision has been in effect.^{8/} The present filing issue did not arise in the first two of these recommended orders. In In re William Aristide, 2017 Fla. Div. Adm. Hear. LEXIS 131, Case No. 16-3860EC (Fla. DOAH Nov. 2, 2016), the administrative law judge concluded that a school principal was not a local officer and recommended the dismissal of the proceeding for a lack of jurisdiction. In the final order, the Commission did not address whether the principal was a local officer, but dismissed "the complaint" in "the public interest" on the authority of section 112.324(12).^{9/} In In re: Joel Davis, 2018 Fla. Div. Adm. Hear. LEXIS 522, Final Order No. 18-035, Case No. 17-6215EC (Fla. DOAH June 8, 2018), the administrative law judge and Commission found the respondent guilty of violating section 112.3145(8)(c) due to a willful failure to file, and the Commission recommended that the Governor remove the respondent from his public position. The final order

notes that the investigative report was issued on September 5, 2017, and the Commission entered an Order Finding Probable Cause on October 25, 2017. According to the Advocate's proposed recommended order, at paragraph 45, the respondent filed the Form 1 on November 15, 2017--after the Order Finding Probable Cause, but before the recommended and final orders, neither of which addresses the effect of the filing on a determination of liability under section 112.3145(8)(c).

30. In In re: Kashamba Miller-Anderson, 2018 Fla. Div. Adm. Hear. LEXIS 599, Final Order No. 18-053, Case 18-0017EC (Fla. DOAH Aug. 1, 2018), the person filed her 2015 Form 1 four months before the Order Finding Probable Cause. The administrative law judge ruled for the respondent based on a finding of a lack of willfulness and a conclusion that section 112.3145(8)(c) applies, not to a failure to file timely, but to a failure to file at all, presumably relative to the pending section 112.3145(8)(c) proceeding. In its final order, which adopts the finding that the failure to file was not willful, the Commission, in dictum, rejected the administrative law judge's conclusion that the filing avoided liability under section 112.3145(8)(c). The arguments of the Advocate in its proposed recommended order in the present case incorporate the reasoning of the Commission and arguments of the Advocate in Miller-Anderson.

31. The Commission's final order reasons that the purpose of financial disclosure is to allow citizens to monitor in real time their public officials or employees for any conflicts of interest they may have, and the administrative law judge's interpretation thwarts this legitimate public purpose. The Commission's final order adopts the arguments of the Advocate, who contended that it is "incomprehensible that a public official could defeat the law by filing at any time subsequent to the date that the maximum fine accrues" and that the legislature "intended for the Commission to pursue violators once the maximum fine accrued, regardless of later actions by the violator."

32. The final order contains no textual analysis of section 112.3145(8)(c). The Commission's reasoning ignores the ability of citizens, if they wish to monitor the unremarkable filings of a Purchasing Specialist in the local Water and Sewer Department, to file third party complaints after the Grace Period. The Commission's reasoning underscores why third parties enjoy broad rights to file complaints, but fails to address how the Commission's construction of section 112.3145(8)(c), so as to allow the Commission to initiate a proceeding to effect the discharge of a public employee who has already filed, comports with the limited regulatory role of the Commission in administering the financial disclosure program and the

legislative policy favoring the filing of financial disclosure, even if untimely, over the punishing of tardy filers.

33. The Advocate's arguments are plainly wrong. As noted immediately above, the authorization of third party complaints means that a late filer cannot defeat the financial disclosure law. More importantly, the law requiring the filing of financial disclosure is not defeated by a filing of financial disclosure after the expiration of the Maximum Automatic Fine Period; to the contrary, financial disclosure is better served by a late filing than by the dismissal of an employee, who may never file. Crediting the "later actions by the violator" in a filing of his Form 1, even after a recommended order finding his failure to file willful, is consistent with the legislative design of the disclosure laws to induce filings, even tardy filings, over the punishment of tardy filers, especially after they have already filed.

34. The Commission's interpretation of section 113.3145(8)(c) is impossible to harmonize with the notices sent to Respondent by the Commission and the Supervisor of Elections. Consistent with the legislative design of the filing scheme, to their credit, the Commission and Supervisor of Elections provided Respondent with myriad urgings to file, most of which were not required by statute. Oddly, though, the notices warn of the Automatic Fine and other statutory penalties, but never mention

the harsher punishment of certain dismissal from employment for a willful failure to file by the end of the Maximum Automatic Fine Period. On the one hand, the failure to mention dismissal seems anomalous because of the obvious purpose of the notices to induce a person to file and the potential effectiveness of the omitted sanction, if a more severe penalty induces compliance. On the other hand, the promise of dismissal for the failure to file by the end of the Maximum Automatic Fine Period--avoidable, only if the failure to file was not willful--is inconsistent with the legislative focus on obtaining financial disclosure, not punishing tardy filers as an end in itself.

35. The Commission's interpretation of section 113.3145(8)(c) also leads to unfair results. Here, Respondent's failure to file an unremarkable financial disclosure form by the end of the Maximum Automatic Fine Period, during an emotionally fraught period, inexorably would lead to the end of a career spanning 20 years of public employment, even though she filed prior to the Report of Investigation and almost certainly before the initiation of the Commission's investigation. A failure to file is not an act of dishonesty. See FedEx Ground Package System v. Futch, 944 So. 2d 469 (Fla. 3d DCA 2006) (failure to file tax return not a crime of dishonesty). By contrast, a "corrupt" misuse of public position by a well-compensated lawyer results only in a fine representing a small fraction of the sum

paid the lawyer's law firm by the public body that he has represented. Robinson v. Comm'n on Ethics, 242 So. 3d 467 (Fla. 1st DCA 2018). Such incongruous results do not promote public confidence in Florida's ethics laws.


36. Absent the filing of a third party complaint, the statutory scheme establishing a financial disclosure program assigns the Commission a limited role, which concludes with a filing of a Form 1 prior to the issuance of a final order in a section 112.3145(8)(c) proceeding. At that point, the Commission's work is done, and it must leave to the public employer, pursuant to any applicable employment agreement, the responsibility for imposing any adverse employment consequences for the public employee's failure to discharge timely this important statutory obligation.

RECOMMENDATION

It is

RECOMMENDED that the Commission enter a final order dismissing the Order Finding Probable Cause and this section 112.3145(8)(c) proceeding.

DONE AND ENTERED this 8th day of October, 2018, in
Tallahassee, Leon County, Florida.



ROBERT E. MEALE
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of October, 2018.

ENDNOTES

^{1/} The Commission's investigatory power generally may be invoked only upon the receipt of a complaint or referral. § 112.324(1). See also § 112.322. However, as noted below, the Commission may investigate and conduct a public hearing on an alleged violation of section 112.3145(8)(c) "without receipt of a complaint."

^{2/} In In re: Kashamba Miller-Anderson, 2018 Fla. Div. Adm. Hear. LEXIS 599, Final Order No. 18-053, DOAH Case 18-0017EC (Aug. 1, 2018), the Commission ruled that willfulness includes "gross indifference and reckless disregard to the requirements of law." In so concluding, the Commission cited its earlier decision in In re: Joel Davis, 2018 Fla. Div. Adm. Hear. LEXIS 522, Final Order No. 18-035, DOAH Case No. 17-6215EC (June 8, 2018).

In defining "willfulness" under the Florida Election Code, the legislature explicitly added "reckless disregard" in former section 106.37, Florida Statutes (1999), as cited in Diaz de la Portilla v. Florida Elections Commission, 357 So. 2d 913, 916-17 n.2 (Fla. 3d DCA 2003). The legislature repealed the statutory definition, and the commission adopted a rule defining "willful" to include "reckless disregard," which was approved in Florida Elections Commission v. Blair, 52 So. 3d 9 (Fla. 1st DCA 2010). Evidently, for the Florida Election Code, the legislature and

agency thought it necessary explicitly to add "reckless disregard" to "willful." No such provision is found within chapter 112, part III or the Commission's rules.

Likewise, a willful failure to file a tax return means that a person acted voluntarily and with the deliberate intent to violate the law. FedEx Ground Package Sys. v. Futch, 944 So. 2d 469, 472-73 (Fla. 3d DCA 2006).

As discussed immediately above, a proceeding to establish a violation of chapter 112, part III, is penal. Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Courts construe penal statutes strictly, State ex rel. Robinson v. Keefe, 149 So. 638 (Fla. 1933) (anti-nepotism statute), and statutory ambiguities are construed against the state. Ocampo v. Dep't of Health, 806 So. 2d 633 (Fla. 1st DCA 2002); Morey's Lounge v. Dep't of Bus. & Prof'l Reg., 673 So. 2d 538, 540 (Fla. 4th DCA 1996); Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164 (Fla. 1st DCA 1990); Russ v. State, 832 So. 2d 901, 906-07 (Fla. 1st DCA 2002) (criminal action). Under these principles, absent a statute or rule defining "willful" to include a reckless disregard of the filing duty, it is more likely than not that "willful" will be reserved for an intentional failure to file.

^{3/} Referring to the above-mentioned delinquency notice that is sent out in July to nonfilers, section 112.3145(7)(c) provides in part: "Each notice shall state that a grace period is in effect until September 1 of the current year; [and] that no investigative or disciplinary action based upon the delinquency will be taken by the agency head or commission if the statement is filed by September 1 of the current year."

^{4/} Section 112.3145(7)(c) provides in part: "if the [Form 1] is not filed by September 1 of the current year, a fine of \$25 for each day late will be imposed, up to a maximum penalty of \$1,500." Like the statutory provision set forth in the preceding endnote, this statutory provision is part of the delinquency notice. The Automatic Fine is also imposed by section 112.3145(7)(f), which states: "Any person who is required to file a statement of financial interests . . . but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500." The meaning of "for each day late" suggests that the Automatic Fine imposed by section 112.3145(7)(f) runs concurrently with the Grace Period; if so, section 112.3145(7)(f) may conflict with section 112.3145(7)(c). However, any such conflict is irrelevant to the present case, and

this recommended order relies on section 112.3145(7)(c) because this is the statutory source of the delinquency notice.

^{5/} A "civil penalty" seems to be a fine, although section 112.324(8)(d) authorizes the Governor "to invoke the penalty provisions of this part," which would include the range of penalties set forth in section 112.317. See endnote 6 below.

^{6/} Under section 112.317(1)(b), which applies to employees, the penalties are dismissal, suspension for up to 90 days without pay, demotion, reduction in salary, forfeiture of no more than one-third of salary for up to 12 months, a "civil penalty" of no more than \$10,000, and restitution.

^{7/} As noted above, section 112.3145(7)(c) refers to person who "has failed to file" by the end of the Maximum Automatic Fine Period, and section 112.3145(7)(f) refers to a statement that "is filed" after the Grace Period. Each provision imposes a consequence, if a third party complaint is filed, for a filing after the end of a filing interval--either the Maximum Automatic Fine Period or the Grace Period. From the language of these provisions, it would not seem to matter even if the filing, after the end of the applicable interval, had preceded the filing of the third party complaint, although the penalty would likely reflect this mitigating factor, and the Commission might even dismiss the dispute under its authority set forth in section 112.324(11) and (12) to dismiss a complaint alleging or uncovering a "de minimis violation attributable to inadvertent or unintentional error" and to dismiss a complaint in accordance with the "public interest."

^{8/} Section 112.3145(8)(c) became effective on July 1, 2014. Ch. 2014-183, §§ 4 and 13, Laws of Fla.

^{9/} Section 112.324(12) authorizes the Commission to dismiss "any complaint or referral" in the public interest. Section 112.3145(8)(c) directs the Commission to proceed--explicitly "without receipt of a complaint" and implicitly without receipt of a referral--so there is no complaint or referral for the Commission to dismiss in a section 112.3145(8)(c) proceeding.

COPIES FURNISHED:

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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.