

DATE FILED

MAR 26 2024

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

COMMISSION ON ETHICS

CONFIDENTIAL

In re RANDALL FINE,

Respondent.

Complaint No. 24-037

DETERMINATION OF INVESTIGATIVE JURISDICTION
AND ORDER TO INVESTIGATE

UPON REVIEW of this complaint, I find as follows:

1. This complaint was filed by Jennifer Jenkins of Satellite Beach, Florida.
2. The Respondent, Randall Fine, serves as a member of the Florida House of Representatives.
3. The complaint alleges a political committee, of which the Respondent is chair, paid to a law firm \$10,000 of his private legal expenses. This indicates possible violations of Section 112.3148(4) and 112.31485(2), Florida Statutes, by the Respondent.¹
4. The remaining allegations in the complaint do not provide a legally sufficient basis for investigation under any prohibition over which the Commission on Ethics has jurisdiction.
5. The complaint claims the Respondent sent a letter to a "Chief Judge," asking that "swift disciplinary action" be taken against a particular attorney and her investigator. The

¹ While the complaint alleges the political committee reported the \$10,000 as a campaign expenditure, it also claims the payment violated Section 112.31485, Florida Statutes. The allegation of the statutory violation implies the payment, even if reported, was still improper, meaning it was not primarily related to contributions, expenditures, or other political activities authorized pursuant to chapter 106. See Section 112.31485(1)(a), Florida Statutes. The investigation will include whether the payment falls within the types of contributions or expenditures authorized under Section 112.31485(1)(a), as well as whether it was allowable under Section 112.3148. See Section 112.312(12)(b)2., Florida Statutes.

complaint claims the attorney was representing the Complainant in litigation against the Brevard County School Board and was seeking to depose the Respondent as a third-party witness. In the letter, which is included in the complaint, the Respondent describes how the investigator, acting with the attorney's approval, twice attempted to serve a subpoena on the Respondent at his residence, and then appeared at the Respondent's legislative office, where he "began banging on the door and windows demanding entrance[.]" despite a sign by the door stating the "office does not accept walkins and appointments must be made by phone." The Respondent writes the investigator attempted to gain entry for fifteen minutes, during which time he and his staff "took cover" pursuant to their safety protocols. The letter continues the Respondent's office then received a voicemail from the attorney indicating that, if the Respondent did not accept service of the subpoena, she would release a video—taken by the investigator through the window—of the Respondent "ducking down behind his desk." The letter concludes by asking that the Chief Judge take action against the attorney and her investigator for their "threatening" and "highly inappropriate" behavior.

6. The complaint claims that because the letter described in paragraph 5 was sent on State letterhead, used the State seal, and identified the Respondent by his public position, and because the underlying litigation involved a private lawsuit unrelated to the performance of the Respondent's public duties, the Respondent was misusing public resources in contacting the court in this manner. The complaint asserts the Respondent's actions in sending the letter constitute a violation of Section 112.313(6), Florida Statutes, and the constitutional prohibition found in Article II, Section 8(h), Florida Constitution.

7. Section 112.313(6), Florida Statutes, which is the only provision in the Code of Ethics relevant to the allegations in paragraphs 5 and 6, states:

MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. [Section 112.313(6), Florida Statutes]

Section 112.312(9), Florida Statutes, defines "corruptly" as

. . . done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to indicate a possible violation of this provision, a complaint must substantively allege that a respondent corruptly used or attempted to use his or her public position or resources within his or her public trust, or corruptly performed his or her official duties, in order to benefit himself/herself or another.

8. Here, the allegations in paragraphs 5 and 6, above, fail to indicate a possible violation by the Respondent of Section 112.313(6). Even accepting as true that the Respondent sent the letter as described, and even assuming the underlying litigation pertained to a private matter unrelated to the Respondent's public duties,² it cannot be said that sending the letter was "inconsistent with the proper performance" of the Respondent's duties, as would be needed to constitute the "corrupt" conduct required for a violation of Section 112.313(6). The letter largely concerned actions taken against the Respondent while he was in his legislative office. It cannot be said that using his public position and public resources to identify what he construed as threatening acts committed against himself at his legislative office constitutes "corrupt" conduct under Section 112.313(6). Moreover, according to the complaint, the purpose of the letter was to

² Without more information, it cannot be ascertained from the complaint whether the litigation pertained to the Respondent's public duties or to a private matter, and this order should not be read as a determination regarding that question.

incite disciplinary action against the attorney and her investigator. While this identifies a detriment to them, the complaint fails to indicate, in a factual, nonconclusory manner, any special private capacity benefit for the Respondent—or any other individual with whom he had a private capacity nexus—as would also be needed to support the "corruption" required for a possible violation of Section 112.313(6).

9. Similarly, we find the allegations in paragraphs 5 and 6, above, do not trigger the application of the prohibition currently found in Article II, Section 8(h)(2) of the State Constitution because, even if accepted as true, they do not identify an intentional "abuse" of the Respondent's public position,³ and demonstrate only a detriment to the attorney and her investigator. In particular, they do not identify in a factual, nonconclusory manner any disproportionate benefit to the Respondent, the Respondent's spouse, children, or employer, or any business with which the Respondent contracts, in which he is an officer, partner, director, or proprietor, or in which he owns an interest, as would be needed to constitute a violation of the constitutional prohibition.

10. The complaint also alleges the Respondent subsequently emailed the Brevard County Sheriff's Office, asking that criminal charges be brought against the attorney and her investigator. The complaint contains a copy of the email, which shows the Respondent sent it from his campaign account, identifies himself as a member of the Florida House of Representatives, and indicates he is a candidate for the Florida Senate. The complaint asserts the

³ Rule 34-18.001(4) of the Florida Administrative Code indicates that:

The requisite intent for finding a violation of the prohibition in Article II, Section 8(h)(2) of the Florida Constitution is that the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties.

Respondent's actions in sending the email constitute a violation of Section 112.313(6), Florida Statutes, and the constitutional prohibition found in Article II, Section 8(h), Florida Constitution.

11. The allegations in paragraph 10, above, fails to indicate a possible violation by the Respondent of Section 112.313(6), which is the only relevant prohibition in the Code of Ethics. Even accepting as true that the Respondent sent the email as alleged, and even assuming it mentions his public position, the Commission on Ethics has found that while identifying one's title may be a "use of position" under Section 112.313(6), the mere acknowledgement that you serve in a public position, without more, does not suggest the type of wrongful intent, or the type of action inconsistent with the proper performance of public duties, necessary to violate the statute. See CEO 23-5, n.8 (finding Section 112.313(6) would not apply if a public officer merely identified his public position in the "author biography" section of a journalism account); CEO 08-20 (finding Section 112.313(6) would not apply if a State Senator allowed his private equity firm to identify his public position in memorandum and publications). Moreover, the email was not sent using a public account or public resources, but was sent from a private campaign account. And while the complaint claims the email was sent in an attempt to bring criminal charges against the attorney and her investigator, this identifies only a detriment to these individuals. It does not identify any special private capacity benefit to the Respondent or anyone else, which would be needed to constitute a violation of Section 112.313(6), as explained above. Considering the foregoing, there is not a legally sufficient basis for investigation under Section 112.313(6).

12. Similarly, without more specific claims identifying either an "abuse" of the Respondent's public position or a disproportionate benefit to the Respondent, the Respondent's spouse, children, or employer, or any business with which the Respondent contracts, in which he is an officer, partner, director, or proprietor, or in which he owns an interest, we find the allegations

in paragraph 10 do not provide a basis for investigation under the prohibition found in Article II, Section 8(h)(2), Florida Constitution.

WHEREFORE, staff of the Commission on Ethics shall conduct a preliminary investigation of this complaint for a probable cause determination of whether the Respondent has violated Section 112.3148(4) and 112.31485(2), Florida Statutes, as set forth in paragraph 3, above.

March 26, 2024
Date

Kerrie J. Stillman
Kerrie Stillman
Executive Director

KS/gps