

JUL 22 2024

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

COMMISSION ON ETHICS

CONFIDENTIAL

In re RANDALL FINE,

Respondent.

Complaint No. 24-134

DETERMINATION OF INVESTIGATIVE JURISDICTION
AND ORDER TO INVESTIGATE

UPON REVIEW of this complaint, I find as follows:

1. This complaint was filed by Robert Burns of Palm Bay, Florida.
2. The Respondent, Randall Fine, serves as a member of the Florida House of Representatives.
3. The complaint alleges a political committee made two separate payments of \$10,000 to provide for the Respondent's private legal expenses. The complaint includes campaign expenditure reports from the political committee indicating two payments of this amount were made to the law firm. The complaint also includes a limited notice of appearance and an emergency motion for a protective order filed by the law firm on the Respondent's behalf during the time in which the payments were made. 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.

¹ Content in the expenditure report would likely be admissible as a hearsay exception with the testimony of a records custodian or qualified witness under Section 90.803(6), Florida Statutes, and the court filings were made in a matter in which the Complainant, as a named party, appears to have had personal knowledge.

5. The complaint claims the Respondent used his position to "press unwarranted and unfounded criminal charges against legal opposition and this [C]omplainant." As support, the complaint includes a police report detailing allegations that the Respondent made against individuals attempting to serve subpoenas upon him. The report concludes there was "insufficient evidence to support an arrest for any of the parties involved." The complaint claims the Respondent's pursuit of criminal charges constitutes a violation of Section 112.313(6), Florida Statutes, and the constitutional prohibition found in Article II, Section 8(h), Florida Constitution.

6. The Commission on Ethics has jurisdiction to investigate only those allegations "based upon personal knowledge or information other than hearsay." See Chapter 2024-53, Laws of Florida (amending Section 112.324(1)(a), Florida Statutes, to require an allegation to be "based upon personal knowledge or information other than hearsay" to be sufficient for investigation). It is unclear from the complaint whether the allegations in paragraph 5 are based on personal knowledge. Regarding whether the allegations are based on information other than hearsay, we note the allegations stem from content in a police report, and that Section 90.803(8), Florida Statutes,² indicates such public reports qualify as hearsay exceptions. Regardless, even

² Section 90.803(8), Florida Statutes, indicates the following may be considered a hearsay exception:

PUBLIC RECORDS AND REPORTS.--Records, reports, statements reduced to writing, or data compilations, in any form, of public officers or agencies, setting forth the activities of the office or agency, or matter observed pursuant to duty imposed by law as to matters which there was a duty to report, excluding in criminal cases matters observed by a police officer or other law enforcement personnel, unless the sources of information or other circumstances show their lack of trustworthiness. The criminal case exclusion shall not apply to an affidavit otherwise admissible under s. 316.1934 or s. 327.354.

considering the allegations in paragraph 5 on their merits, they do not provide a legally sufficient basis for investigation, as explained below.

7. Section 112.313(6), Florida Statutes, which is the only provision in the Code of Ethics relevant to the allegations in paragraphs 5, 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 paragraph 5, above, fail to indicate a possible violation by the Respondent of Section 112.313(6). Even accepting as true that the Respondent filed a police report and that law enforcement eventually concluded there was insufficient evidence to support any arrests, these actions appear to be taken in his private capacity. There is no indication in the police report that the Respondent used his public position to either initiate or influence the course of the investigation. In short, the filing of the police report did not involve the use of the Respondent's public position or any property or resources within his public trust, or the

performance of his official duties, as would be needed to constitute a violation of Section 112.313(6).³

9. The complaint also claims the Respondent has "used official state letterhead and his official email to influence court proceedings and law enforcement," and has falsely claimed "scheduling conflicts" to avoid being deposed in legal matters. However, the complaint fails to include or even describe the letter or emails in question, and provides no support for its general allegation that the Respondent's claims of "scheduling conflicts" are false. Given the lack of substantiation, these claims are conclusory, and while material assertions of fact are taken as true in an analysis of legal sufficiency, conclusions or unwarranted deductions of fact are not a sufficiently specific basis for investigation.

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.

July 22, 2024
Date

Kerrie J. Stillman
Kerrie Stillman
Executive Director

KS/gps

³ For the same reason, we find the allegations in paragraph 5 fail to identify the type of "abuse of position" necessary to implicate the prohibition currently found in Article II, Section 8(h)(2) of the State Constitution.