

Before the
State of Florida
Commission on Ethics

Complaint No. 20-060, 20-073 & 20-103
(consolidated)

IN RE: Douglas Underhill,
Respondent.

Response to Advocate's Amended Recommendation

Douglas Underhill, a member of the Escambia County Commission, through undersigned counsel, submits this response to the Advocate's Amended Recommendation, pursuant to Rule 34-5.006(3), Florida Administrative Code.¹

Preliminary Statement

Three complaints were filed with Commission alleging that Commissioner Underhill violated provisions of Florida's Code of Ethics for Public Officers and Employees. The Commission's

¹ This response is submitted at this late date as a result of the Commission Chair's denial of a request for a continuance on August 25, 2021. The continuance was requested because undesigned counsel had just been retained on August 24, 2021 and that a continuance was needed in order to permit counsel to effectively respond to the Advocate's Recommendation.

Executive Director found the complaints legally sufficient to warrant investigation as to whether Commissioner Underhill violated Sections 112.313(6), 112.313(8), 112.313(7)(a), 112.3148(3), 112.3148(4), and 112.3148(8), Florida Statutes. The complaints were consolidated for investigation and consideration by the Commission.

Following investigation of the 13 allegations which were deemed legally sufficient, the Advocate recommended that the Commission find:

- **“No probable cause”** with respect to 6 of the 13 alleged violations; and
- **“Probable cause”** with respect to 7 of the 13 alleged violations.

Each of the Advocate’s Recommendations will be addressed in turn.

Allegations One and Two

Allegations One and Two involve the public release of “shade meeting” transcripts and minutes of meetings of the Escambia

County Board of County Commissioners obtained by reason of his official position. (AR at pp. 2-9.)²

Commissioner Underhill advanced several reasons for releasing the “shade meeting” transcripts. (ROI ¶¶62, 64, 65.) For example, Commissioner Underhill noted “that the only court actions in the litigation since the agreements were made have been motions by the County Attorney to extend the time for discovery, and the County Attorney has not made any attempt(s) to produce discovery. (ROI ¶62.) As such, “[h]e stated that the only purpose these motions served was to keep what was discussed during the shade meetings from being made available to the public.” (ROI ¶62.) He further stated that he “believe[d] the County Attorney wanted to keep the

² The Advocate has recommended that the Commission find “[t]here is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by publicly sharing and/or publishing confidential transcripts, including the minutes, of meetings of the Escambia County Board of County Commissioners.” AR at p. 34.

The Advocate has recommended that the Commission find “[t]here is probable cause to believe that Respondent Section 112.313(8), Florida Statutes, by disclosing or using information not available to members of the general public (i.e., shade meeting transcripts, including the minutes) and gained by reason of his official position for his personal gain or benefit or the personal gain or benefit of another person or business entity.” (AR at p. 34.)

transcripts confidential because they showed the ‘dirty operations on the part of the County" and petty politics’ being engaged in by a former County Commissioner.” (ROI ¶64.)

It is the policy of this state that governmental agencies are prohibited from taking any adverse action against a person who discloses “any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds...” See Section 112.3187, Florida Statutes.³ While “Florida’s Whistleblowers Act” is not specifically applicable “public officers” who blow the whistle on “the improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee,” it should be recognized by this Commission as defense when information is released concerning any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds. It is not in the public

³ Section 112.3187(3)(e), Florida Statutes, defines “gross mismanagement” to mean:

a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

interest that such acts should kept secret under the guise of continued litigation when all “the legal aspects of the lawsuit had been ‘essentially resolved.’” (ROI ¶¶65, 66.)

The legislative intent and declaration of policy underlying this Code of Ethics states that “[i]n order to preserve and maintain the integrity of the governmental process, it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions, either by direct communication with such officials or by solicitation of others to engage in such efforts, be regularly disclosed to the people.” Section 112.311(3), Florida Statutes. Commissioner Underhill’s action are consistent with this statement of legislative intent and declaration of policy.

Commissioner Underhill respectfully requests that the Commission reject the Advocate’s Recommendation of “probable cause” as to Allegations One and Two and, instead, conclude there is “no probable cause” to believe he violated either Section 112.313(6) or Section 112.313(8), Florida Statutes, by publicly sharing and/or publishing confidential transcripts, including the minutes, of meetings of the Escambia County Board of County Commissioners.

Allegations Three through Six

Allegations Three through Six involve various actions in connection with a “GoFundMe” account established by Commissioner Underhill to cover legal expenses incurred in several lawsuits for which the County would not pay. (AR at pp. 9-19.)

Allegation Three

On November 26, 2019, Commissioner Underhill created a “GoFundMe page to assist in the payment of his legal expenses incurred from being personally sued so that his family would not have to suffer financially from the multiple lawsuits filed against him. (ROI ¶¶ 8, 15.) Commissioner Underhill had two social media accounts – a personal Facebook page and a Facebook page where he identifies himself as a County Commissioner, the latter which he uses to keep his constituents informed regarding various issues in the County. (ROI ¶27.) Commissioner Underhill publicized the GoFundMe legal defense account on his personal Facebook pages. (ROI ¶26.) There is no evidence that Respondent publicized the legal defense fund on a social media page affiliated with the County, as alleged. (AR at p. 11.)

As a consequence, the Advocate recommended that the Commission find “no probable cause” to believe that Commissioner Underhill violated Section 112.313(6), Florida Statutes, as alleged.⁴ Commissioner Underhill respectfully requests that the Commission concur in the Advocate’s Recommendation as to Allegation Three.

Allegation Four

Allegation Four involves the question of whether Commissioner Underhill solicited a contribution to the legal defense fund from an individual, Fred Hemmer, who was either a vendor doing business with Escambia County or a lobbyist who lobbies Escambia County, or the principal of such a lobbyist. (AR at pp. 12-15.) With respect to this allegation, the Advocate recommended that the Commission find “probable cause.”⁵

⁴The Advocate has recommended that the Commission find “[t]here is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by publicizing his legal defense fund on a social media page affiliated with the County.” (AR at p. 34.)

⁵The Advocate has recommended that the Commission find “[t]here is probable cause to believe Respondent violated Section 112.3148(3), Florida Statutes, by soliciting a donation(s) from Fred Hemmer, a vendor doing business with Respondent's agency, or a lobbyist who lobbies Respondent's agency, or the principal of such lobbyist.” (AR at p. 34.)

In addressing this allegation, a threshold question is whether the “GoFundMe” fundraiser page was a prohibited solicitation within the meaning of Section 112.3148(3), Florida Statutes. See ROI, Exhibit “B.” The Advocate concludes that it does. In reaching that conclusion, the Advocate cites the following definition of “solicit:” “*Solicit* means any direct or indirect communication of any kind whatsoever, regardless of by whom initiated, inviting, advising, encouraging or requesting any person or entity, in any manner, to take or refrain from taking any action.” (AR at p. 15, note 9.)

Accepting the logic of the Advocate means that Commissioner Underhill’s “GoFundMe” fundraiser page was a prohibited solicitation of each and every proscribed donor in Section 112.3148(3) – “a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011 or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist” – whether or not they made a contribution “GoFundMe” account.

This, in fact, is what the Advocate asserts: “Essentially, any fundraising overture made toward a person individually, a group of

people, or to the public at large, that asks for a donation is considered a solicitation. It may be a written solicitation if it is by direct mail campaign or an online solicitation via a GoFundMe page.” (AR at p. 15.) This is a bridge too far.⁶

Commissioner Underhill respectfully requests that the Commission reject the Advocate’s overbroad concept of what constitutes a solicitation and reject the Advocate’s Recommendation as to Allegation Four. Instead, Commissioner Underhill respectfully requests that the Commission conclude there is “no probable cause” to believe he violated Section 112.3148(3), Florida Statutes, by soliciting a donation via GoFundMe from Fred Hemmer, a vendor doing business with Respondent's agency, or a lobbyist who lobbies Respondent's agency, or the principal of such lobbyist.

Allegation Five

Allegation Five involves the question of whether Commissioner Underhill knowingly accepted a contribution to the legal defense fund from an individual, Fred Hemmer, who was either a vendor doing

⁶If this indeed is the position of the Commission, it might want to consider amending its rules relating to the solicitation of donations to clearly proscribe solicitations by reporting individuals via GoFundMe.

business with Escambia County or a lobbyist who lobbies Escambia County, or the principal of such lobbyist. (AR at pp. 15-17.) With respect to this allegation, the Advocate recommended that the Commission find “probable cause.”⁷

In addressing this allegation, the text of the statute controls.

Section 112.3148, Florida Statutes, provides as follows:

A reporting individual or procurement employee or any other person on his or her behalf is prohibited **from knowingly accepting**, directly or indirectly, a gift from a vendor doing business with the reporting individual’s or procurement employee’s agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual’s or procurement employee’s agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

⁷The Advocate has recommended that the Commission find “[t]here is probable cause to believe Respondent violated Section 112.3148(4), Florida Statutes, by knowingly accepting a contribution(s) exceeding \$100 to a legal defense fund from vendor(s) doing business with Respondent’s agency, or lobbyist(s) who lobby Respondent’s agency, or principal(s) of such lobbyist(s).” (AR at p. 34.)

(Emphasis added.)

The statute requires that Commissioner Underhill must have “knowingly” accepted the gift (Fred Hemmer’s \$250 contribution to the GoFundMe account) from either a vendor doing business with Escambia County or a lobbyist who lobbies Escambia County, or the principal of such lobbyist. Mr. Hemmer donated \$250 to Commissioner Underhill’s legal defense fund on November 27, 2019.

(ROI ¶25.)

While the Advocate couches her probable cause recommendation in the alternative to “knowingly accepting a contribution(s) exceeding \$100 to a legal defense fund from vendor(s) doing business with Respondent's agency,” the evidence in the Report of Investigation does not support that conclusion. “Mr. Codey Leigh, the General Counsel for the Escambia County Clerk of Court, stated that the Clerk's purchasing records do not reflect that any of the eleven donors who donated over \$100 to the Respondent's GoFundMe account were vendors of the County between November 2018 through January 2020.” (ROI ¶24.) It is likewise significant that “the County does not have a lobbyist registration system nor does the

County's Purchasing Department maintain a list of vendors.” (ROI ¶23.)

Notwithstanding the lack of a lobbyist registry, the Advocate bases her recommendation that Commissioner Underhill “knowingly accepted” a gift from a lobbyist or the principal of a lobbyist on the fact that Mr. Hemmer and his attorney came before the County Commission on January 17, 2019, to discuss his company's offer to purchase property from the County. (ROI ¶25.) Without a lobbyist registry, it is not unreasonable to conclude that the Commissioner Underhill did not “knowingly” accept a gift from a lobbyist or the principal of a lobbyist when he received Fred Hemmer’s \$250 contribution to his GoFundMe account to defray legal expenses. The appearance of Mr. Hemmer and his attorney before the County Commission occurred some nine months before the contribution was made to the GoFundMe account.

Commissioner Underhill respectfully requests that the Commission reject the Advocate’s Recommendation as to Allegation Five and, instead, conclude there is “no probable cause” to believe he violated Section 112.3148(4), Florida Statutes, or in the alternative, conclude there is “probable cause and take no further action.”

Allegation Six

Allegation Six involves the question of whether Commissioner Underhill failed to report contributions in excess of \$100 to the GoFundMe account from individuals or entities that are not proscribed donors. (AR at pp. 17-19.) With respect to this allegation, the Advocate recommended that the Commission find “probable cause.”⁸

The Advocate’s Recommendation of “probable cause” is premised on two factors: the late submission of two Form 9 Quarterly Gift Disclosure filings;⁹ and the failure to list a contribution from Richard Andres on either of the Form 9 filings. (AR at p.19.) The omission of Mr. Andres from Commissioner Underhill’s Form 9 filing was an oversight. Commissioner Underhill explained “that any contributor whom he failed to list on either of the CE Form 9s was

⁸The Advocate has recommended that the Commission find “[t]here is probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, “Quarterly Gift Disclosure” disclosing contribution(s) exceeding \$100 to a personal legal defense fund. (AR at p. 34.)

⁹The December 2019 Form 9 filing was due March 31, 2020, but was filed April 30, 2020; The March 2020 Form 9 filing was due June 30, 2020, but was filed July 9, 2020.

not left off the list intentionally, and it was his understanding that all the donors who gave in excess of \$100 had been reported.” (ROI ¶21.)

Mr. Andres is not a lobbyist or vendor of the County. (ROI ¶21.)

Commissioner Underhill respectfully requests that the Commission reject the Advocate’s Recommendation as to Allegation Six and, instead, conclude there is “no probable cause” to believe he violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, "Quarterly Gift Disclosure" disclosing a contribution from Mr. Andres exceeding \$100 to a personal legal defense fund. In the alternative, Commissioner Underhill requests that the Commission conclude there is “probable cause, but take no further action.”

Allegations Seven through Nine

Allegations Seven through Nine involve representation of Commissioner Underhill by the Clark Partington law firm in a libel / slander lawsuit filed against Commissioner Underhill and three other defendants and involved behavior that occurred prior to Commissioner Underhill's service on the County Commission. (AR at p. 20; ROI ¶30.)

Allegation Seven

Allegation Seven involves an allegation that Commissioner Underhill solicited free personal legal services from the Clark Partington law firm, a vendor doing business with Escambia County, or a lobbyist who lobbies Escambia County, or the principal of such lobbyist. With respect to this allegation, the Advocate recommended that the Commission find “no probable cause.”¹⁰

As noted by the Advocate, “[t]here is no evidence that the Clark Partington law firm is a vendor doing business with the County or a lobbyist, thus, it is not a prohibited donor.” (AR at p. 22.) In addition, the Advocate concluded that Commissioner Underhill “did not solicit pro bono services from the law firm as evidenced by the contract for the payment of legal services.” (AR at p. 22.)

Commissioner Underhill respectfully requests that the Commission concur in the Advocate’s Recommendation as to Allegation Seven.

¹⁰The Advocate has recommended that the Commission find “[t]here is no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes, by soliciting free personal legal services from the Clark Partington law firm, a vendor doing business with Respondent's agency, or a lobbyist who lobbies Respondent's agency, or the principal of such lobbyist.” (AR at p. 35.)

Allegation Eight

Allegation Eight involves an allegation that Commissioner Underhill accepted free personal legal services from the Clark Partington law firm, a vendor doing business with Escambia County, or a lobbyist who lobbies Escambia County, or the principal of such lobbyist. With respect to this allegation, the Advocate recommended that the Commission find “no probable cause.”¹¹

As with the Allegation Seven, the Advocate concludes that “[t]here is no evidence that the Clark Partington law firm is a vendor doing business with the County or a lobbyist, thus, the law firm is not a prohibited donor.” (AR at p. 24.) Commissioner Underhill respectfully requests that the Commission concur in the Advocate’s Recommendation as to Allegation Eight.

¹¹The Advocate has recommended that the Commission find “[t]here is no probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes, by knowingly accepting free personal legal services valued over \$100 from the Clark Partington law firm, a vendor doing business with Respondent’s agency, or a lobbyist who lobbies Respondent’s agency, or the principal of such lobbyist.” (AR at p. 35.)

Allegation Nine

Allegation Nine involves an allegation that Commissioner Underhill accepted free personal legal services from the Clark Partington law firm that should have been reported on a CE Form 9 gift disclosure filing. The Advocate's Recommendation of "probable cause" is premised on the supposition that Commissioner Underhill never intended to pay his outstanding bill." (AR at p. 24.)

Contrary to the factors cited by in the Advocate's Recommendation, the Report of Investigation reveals that Commissioner Underhill did indeed intend to pay in full for the legal services he received from the Clark Partington law firm in connection with defending the libel / slander lawsuit filed against him and three other defendants.

- First, there was an agreement between the defendants that each defendant would one-quarter of the legal fees relative to the lawsuit. (ROI ¶33.)
- Second, he did not receive a billing statement from the Clark Partington law firm after the case was dismissed. (ROI ¶33.) Scott Remington of the Clark Partington law firm confirmed that the firm's accounting department never attempted to collect the

remainder of the amount owed and this matter may have "fallen through the cracks." (ROI ¶32.)

- Third, when he asked the Clark Partington law firm to send him a bill, he received a bill for approximately \$20,000 and thought this amount was exceedingly high. (ROI ¶33.) Commissioner Underhill subsequently contacted the firm and asked for an itemization of the charges to determine if they were correct, but he never received this information. (ROI ¶33.)
- Fourth, it was not until he was notified of this instant ethics complaint (Complaint No. 20-060, filed on April 20, 2020) that he again contacted the Clark Partington law firm and was advised that he owed one-third of the total bill. Commissioner Underhill recalled that he pointed out to the firm that the letter of engagement specified that he was responsible for only one-quarter of the bill, not one-third. Mr. Remington agreed with him and Commissioner Underhill promptly paid his share of the outstanding balance in full. (ROI ¶33.)
- Finally, Commissioner Underhill provided a copy of a May 8, 2020 letter and email from Mr. Remington that confirms all fees

and costs incurred on his behalf were paid in full on that date.

(ROI ¶33.)

Commissioner Underhill respectfully requests that the Commission reject the Advocate's Recommendation as to Allegation Nine and, instead, conclude there is "no probable cause" to believe he violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, "Quarterly Gift Disclosure," by failing to file a CE Form 9, "Quarterly Gift Disclosure" disclosing free personal legal services exceeding \$100 from the Clark Partington law firm.

Allegations Ten Through Thirteen

Allegations Ten through Thirteen involve Commissioner Underhill's relationship, if any, with the Pensacola Sports Association, which is a local not-for-profit, that obtains funding from Visit Pensacola, the County's designated tourism promotion agency. Visit Pensacola is funded from the County's Tourist Development Tax. (AR at pp. 26-34.)

These allegations relate to Commissioner Underhill's transporting a set of buoys for the Emerald Coast Grand Prix, which is hosted by Reflections Advertising which receives grant funding from the County's Tourist Development Tax. (AR at p. 27; ROI ¶¶54,

55.) Commissioner Underhill learned of the need to obtain the buoys that were required for the event from the Director of the Pensacola Sports Association and he offered to make the trip to Canada, along with his son and his administrative assistant, to take delivery of the buoys. (ROI ¶¶54, 55.) Commissioner Underhill was told that expenses could be reimbursed under the grant that Reflections Advertising received through the Pensacola Sports Association. (ROI ¶51.)

Following the April trip, Commissioner Underhill submitted his expense receipts to Reflections Advertising, which, in turn, submitted them to the Pensacola Sport Association for reimbursement. (ROI ¶56, Exhibit G.) A Letter of Agreement, dated April 13-15, 2018, but written in September 2018, was requested by staff of Visit Pensacola to document the reason for the reimbursements to Respondent. (ROI ¶51, Exhibit G.)

Commissioner Underhill was reimbursed \$1,106.90 for round-trip mileage, calculated at 54.5 cents per mile, and \$1,039.52 for the cost of shipping the equipment used in the competition back to Canada, for a total of \$2,146.42. (AR at p. 28; ROI ¶¶49, 51, Exhibit G.) The reimbursement included materials Respondent bought to

build a crate to return the buoys to the owner in Ontario. (ROI ¶56, Exhibit G.) The amount did not include Respondent's, his son's, or his assistant's time or meals. (ROI ¶¶55, 56, Exhibit G.) Only actual expenses were reimbursed. (ROI ¶56.)

Allegation Ten

Allegation Ten focuses on whether Commissioner Underhill had a relationship with the Pensacola Sports Association, based on the expense reimbursement for the trip to Canada and the return shipping expenses, prohibited by Section 112.313(7)(a), Florida Statutes. The Advocate concluded that he did not.¹²

As noted by the Advocate, Commissioner Underhill did not have a "contractual relationship" with a business entity regulated by or going business with the Escambia County Commission; nor did he have a "contractual relationship" that created a continuing or frequently recurring conflict between his private interests and his

¹²The Advocate has recommended that the Commission find "[t]here is no probable cause to believe that Respondent violated Section 112.313(7)(a), Florida Statutes, by having a conflicting employment or contractual relationship with an entity which is subject to the regulation of, or doing business with, the entity in which Respondent is a public officer." (AR at p. 10.)

public duties or that impeded him in the full and faithful discharge of his public duties as a member of the Escambia County Commission. (AR at. pp. 29-30.)

Commissioner Underhill respectfully requests that the Commission concur in the Advocate's Recommendation of "no probable cause" as to Allegation Ten.

Allegation Eleven

Commissioner Underhill is alleged to have violated Section 112.3148(3), Florida Statutes, by soliciting reimbursement for travel expenses and the cost of shipping certain equipment from the Pensacola Sports Association, a private not-for-profit organization that accepted funding from the County.

The investigation revealed and the Advocate concluded "[t]here is no evidence to support the allegation that Respondent solicited reimbursement of expenses and costs from the PSA, rather than being offered reimbursement." (AR at p. 31.) Commissioner Underhill respectfully requests that the Commission concur in the Advocate's Recommendation of "no probable cause" as to Allegation Eleven.¹³

¹³The Advocate has recommended that the Commission find "[t]here is no probable cause to believe that Respondent violated Section

Allegation Twelve

Allegation Twelve involves the question of whether Commissioner Underhill knowingly accepted reimbursement for travel expenses and the cost of shipping certain equipment from the Pensacola Sports Association, a private not-for-profit organization that accepted funding from the County contrary to the provisions of Section 112.3148(4), Florida Statutes. (AR at pp. 31-32.) With respect to this allegation, the Advocate recommended that the Commission find “no probable cause.”¹⁴

The official records and minutes of the County Commission meetings do not reflect that anyone from the Pensacola Sports Association appeared before the County Commission in the preceding 12 months to lobby. Accordingly, the Advocate recommended that the

112.3148(3), Florida Statutes, by soliciting reimbursement for travel expenses and the cost of shipping certain equipment from Pensacola Sports Association, Inc., a private not-for-profit organization that accepted funding from the County.” (AR at p. 35.)

¹⁴The Advocate has recommended that the Commission find “[t]here is no probable cause to believe Respondent violated Section 112.3148(4), Florida Statutes, by knowingly accepting reimbursement for travel expenses and the cost of shipping certain equipment from Pensacola Sports Association, Inc., a private not-for-profit organization that accepted funding from the County.” (AR at p. 35.)

Commission find there is “no probable cause” to believe that Respondent violated Section 112.3148(4), Florida Statutes, as alleged. (AR at pp. 31-32.)

Commissioner Underhill respectfully requests that the Commission concur in the Advocate’s Recommendation as to Allegation Twelve.

Allegation Thirteen

The Advocate has recommended that the Commission find “probable cause” to believe that Commissioner Underhill violated Section 112.3148(8), Florida Statutes, when he failed to report the \$2,146.42 reimbursement for travel expenses and the cost of shipping certain equipment from the Pensacola Sports Association on a CE Form 9.¹⁵

In making this recommendation, the Advocate noted the unusual circumstances involved here: “In the usual scenario, the gift would be given prior to the consideration received. **In this matter,**

¹⁵The Advocate has recommended that the Commission find “[t]here is probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, “Quarterly Gift Disclosure” disclosing reimbursed travel expenses and shipping costs exceeding \$100.” (AR at p. 35.)

Respondent gave consideration and the reimbursement (gift) was provided thereafter. (AR at pp. 33-34, emphasis added.) In this case, the reimbursement of expenses to obtain and return the buoys from Canada was not provided by the Pensacola Sports Association within 90 days of the travel.

Thus, the Advocate's recommendation there was a reportable "gift," despite the fact that Commissioner Underhill gave "consideration of equal or greater value" for the reimbursement of expenses. (AR at p. 33.) Had the reimbursement to Commissioner Underhill been made within the 90-day period, there would be no "gift" reporting issue. The rigid application of the law in this scenario makes no sense.

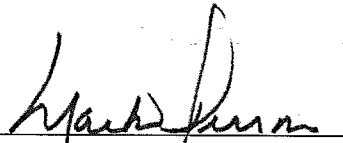
Commissioner Underhill respectfully requests that the Commission reject the Advocate's Recommendation as to Allegation Thirteen and, instead, conclude there is "no probable cause" to believe he violated Section 112.3148(4), Florida Statutes, or in the alternative, conclude there is "probable cause and take no further action."

Conclusion

For the reasons set forth herein, Commissioner Underhill respectfully requests that the Commission:

- Concur in the Advocate's Recommendation that there is "no probable cause" as to Allegations Three, Seven, Eight, Ten, Eleven, and Twelve; and
- Reject the Advocate's Recommendation of "probable cause," as to Allegations One, Two, Four, Five, Six, Nine, and Thirteen, and instead conclude there is either "no probable cause" or "probable cause and take no further action."

Respectfully submitted on this 8th day of September 2021, by:



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