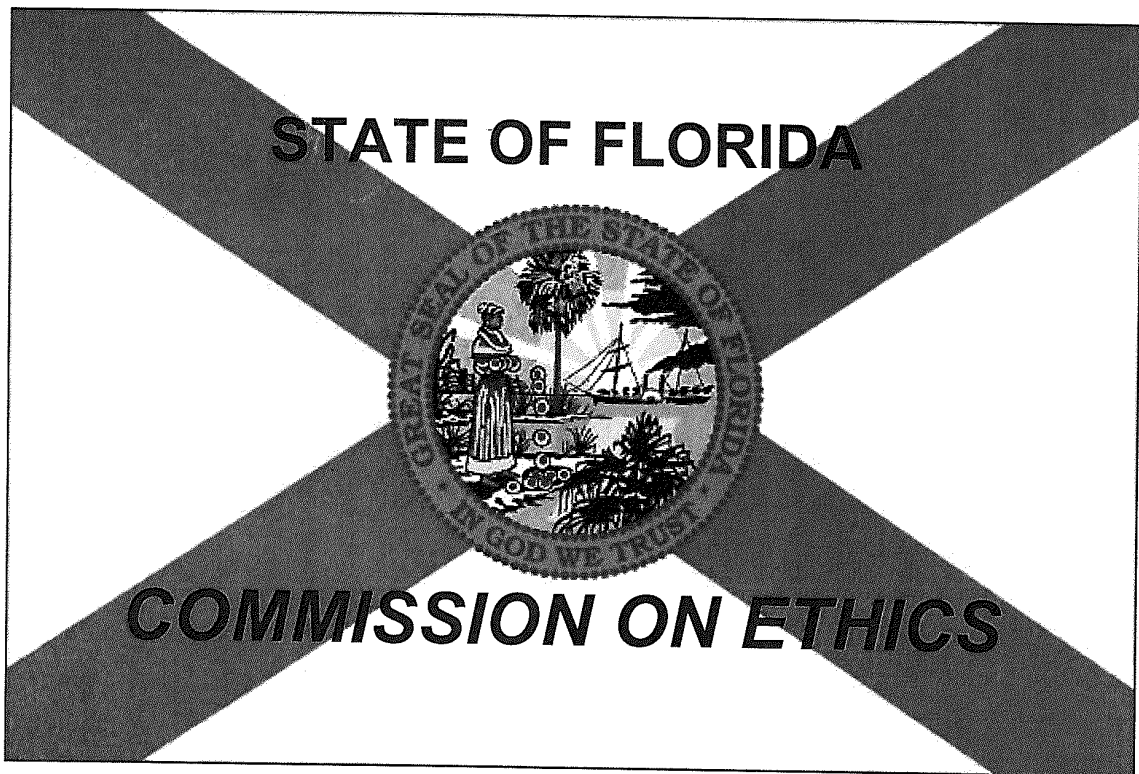


# REPORT OF INVESTIGATION



Complaint Number 20-060, 20-073, 20-103 (Consolidated)

## NOTICE CONCERNING CONFIDENTIALITY

This report of investigation concerns an alleged violation of Chapter 112, Part III, Florida Statutes, or other breach of public trust under provisions of Article II, Section 8, Florida Constitution. The Report and any exhibits may be confidential (exempt from the public records law) pursuant to Section 112.324, Florida Statutes, and Chapter 34-5, F.A.C., the rules of the Commission on Ethics. Unless the Respondent has waived the confidentiality in writing, this report will remain confidential until one of the following occurs: (1) the complaint is dismissed by the Commission; (2) the Commission finds sufficient evidence to order a public hearing; or (3) the Commission orders a public report as a final disposition of the matter. \*See Section 112.3215, Florida Statutes, regarding executive branch lobbying matters and confidentiality.

STATE OF FLORIDA  
COMMISSION ON ETHICS  
Post Office Drawer 15709  
Tallahassee, Florida 32317-5709

## REPORT OF INVESTIGATION

**TITLE:** DOUGLAS UNDERHILL  
County Commissioner  
Escambia County  
Pensacola, FL

**COMPLAINT NO.:** 20-060, 20-073, 20-103  
(Consolidated)  
Exhibits A through I

**INVESTIGATED BY:** CHARLIE FIELDS BY AGM  
Charlie Fields  
[Signature]  
Robert G. Malone

**Distribution:** Commission on Ethics  
Respondent  
Advocate  
File

**Releasing Authority:** [Signature]  
C. Christopher Anderson, III  
Executive Director  
April 19, 2021  
Date

**REPORT OF INVESTIGATION  
COMPLAINT NO. 20-060, 20-073, and 20-103 (Consolidated)**

- (1) The complaints in this matter were filed by David M. Bear (20-060), Joe Ward (20-073), and John F. Stenicka (20-103) all of Pensacola, Florida, who allege that the Respondent, Escambia County Commissioner Douglas Underhill, violated the Code of Ethics for Public Officers and Employees.
- (2) Complainant Bear alleges in his complaint that the Respondent established a legal defense fund to assist in the payment of personal legal expenses. The Complainant alleges the Respondent accepted multiple contributions to the fund exceeding \$100 and failed to disclose these contributions as gifts on a CE Form 9, "Quarterly Gift Disclosure."
- (3) Complainant Bear further alleges the Respondent publicized the legal defense fund on a social media page affiliated with the County.
- (4) Complainant Bear alleges the Respondent accepted personal legal services provided without charge and failed to disclose the cost of these services as gifts on a CE Form 9.
- (5) Finally, Complainant Bear alleges the Respondent solicited reimbursement for travel expenses and the cost of shipping certain equipment from a private not-for-profit organization that accepted funding from the County. The complaint alleges the Respondent failed to disclose the reimbursed travel expenses and shipping costs as gifts on a CE Form 9.
- (6) Complainants Joe Ward (20-073) and John Stenicka (20-103) allege that the Respondent publicly shared and/or published the minutes of private and confidential meetings of the Escambia Board of County Commissioners. The complaints claim the meetings concerned upgrading a water/sewer system, and that the Respondent knew, or should have known, the minutes were private and confidential at the time that he publicly released them.
- (7) The Executive Director of the Commission on Ethics noted that based upon the information provided in the complaint, the above-referenced allegations were sufficient to warrant a preliminary investigation to determine whether the Respondent's actions violated Sections 112.313(6), Florida Statutes (Misuse of Public Position), 112.313(7)(a), Florida Statutes (Conflicting Employment or Contractual Relationship), 112.313(8), Florida Statutes (Disclosure or Use of Certain Information), and 112.3148(3), 112.3148(4), and 112.3148(8), Florida Statutes (Reporting and Prohibited Receipt of Gifts).

**GoFundMe Legal Defense Fund**

- (8) David Bear (20-060) alleges that the Respondent established a legal defense fund to assist in the payment of his personal legal expenses. He alleges the Respondent accepted multiple contributions that exceeded \$100 and failed to disclose those contributions as gifts on a CE Form 9, "Quarterly Gift Disclosure."

(9) The instructions for the gift disclosure form (appended as Exhibit A) state that a financial disclosure filer is required to list each gift he or she believes to exceed \$100 on the CE Form 9 with a description of the gift and monetary value of the gift, as well as the name and address of the person making the gift, and the date the gift was received.

(10) Mr. Bear, in the presence of his Attorney, Rick Figlio, stated that the Respondent was sued for defamation in several lawsuits prior to, and soon after, becoming an Escambia County Commissioner. The Complainant alleges that on November 26, 2019, a GoFundMe<sup>1</sup> page (appended as Exhibit B) entitled, "Commissioner Doug Underhill Legal Defense Fund," was created. He said that although he is not certain, he assumes the Respondent created the account. Mr. Bear said he does not know if the Respondent personally solicited donations, but he maintains the Respondent publicized the GoFundMe page on his personal Facebook pages and on a social media page called "Citizens Watch," that has 7,500 members.

(11) Mr. Bear stated that the Respondent prevailed in each of the lawsuits, but accumulated legal fees. He advised that the Respondent asked Escambia County Attorney Alison Rogers during a County Commission meeting if the County could pay the attorney fees. He said that when Attorney Rogers advised the Respondent that the County would not cover the fees, the Respondent then asked if he could create a "GoFundMe" account to receive contributions to help with his legal fees from the lawsuits. Mr. Bear recalled Attorney Rogers advised the Respondent that it was acceptable to receive contributions, but that he could not receive contributions from lobbyists or vendors doing business with the County. Mr. Bear stated that Attorney Rogers sent an email to the Respondent (appended as Exhibit C) on September 22, 2017 (when he first inquired about the County paying his legal fees concerning an earlier lawsuit filed against him), detailing his responsibility and obligations to comply with Chapter 112, Florida Statutes, "Gift Disclosure and Prohibited Gifts." He said Attorney Rogers stressed the importance of filing a gift report with respect to donations to the legal defense fund.

(12) Mr. Bear advised that, according to the GoFundMe page, the Respondent raised \$4,829 from over 40 contributors. The contributions range from \$5 to \$500. Mr. Bear said there were a number of contributions exceeding \$100, including two \$500 contributions from anonymous contributors. He maintains that the Respondent may have changed the identity of some of the contributors to "anonymous" on the GoFundMe page. Mr. Bear explained that he believes this may have occurred because he (Bear) made a \$5 contribution to the account and did not request that his identity be withheld, but he said his contribution appears on the GoFundMe page as coming from an anonymous contributor.

(13) A review of the Respondent's GoFundMe website reflects that the Respondent is listed as the "organizer," or creator, of the fundraiser. The fundraising site, which is still active, confirms that 44 people donated money to the fundraiser for a total of \$4,829 raised towards a

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<sup>1</sup> GoFundMe is a website that allows individuals and groups to solicit and receive monetary contributions online. The website allows contributors to make donations in their name or anonymously. Notably, the organizer of the GoFundMe page is able to see the name of each contributor, regardless of whether the contributor selected to donate anonymously. The organizer may elect to show a contributor's name as "anonymous" and hide the identity of the contributor.

goal of \$50,000. The list of donors who appear on the GoFundMe site confirms that 11 of the donations were over \$100. Of these 11 donations, five show the donor as "anonymous" on the GoFundMe website.

(14) The Respondent advised by telephone that he was elected to the Escambia County Commission, District 2, in November 2014. He confirmed that several lawsuits had been filed against him personally and in his capacity as a County Commissioner within the last six years. In spite of prevailing in the lawsuits, he stated, each lawsuit cost him approximately \$20,000 in legal defense. He stated that because of the thousands of dollars in legal fees he incurred, he consulted with County Attorney Rogers about creating a GoFundMe account. He acknowledged Attorney Rogers advised him that any contributions received exceeding \$100 would need to be reported on a Quarterly Gift Disclosure Form (CE Form 9).

(15) The Respondent stated he created the GoFundMe account on November 26, 2019. He said the purpose of the GoFundMe account was to raise funds to cover the legal fees that he had accrued from being personally sued, and so that his family would not have to suffer financially from the multiple lawsuits filed against him.

(16) The Respondent stated that when supporters asked how they could help, he would email them the link to the GoFundMe account that he created for his legal defense fund. He said contributors were free to give any amount and, by checking a box, had the ability to remain anonymous. However, he confirmed that, as the owner of the GoFundMe account, he could see all the contributors' names.

(17) The Respondent stated that he ultimately reported all contributions in excess of \$100 on two CE Form 9s (appended as composite Exhibit D). He maintains that none of the contributors who donated more than \$100 were lobbyist or vendors of the County and that he was "very, very careful" to make sure that they were not. He explained that, for the contributors he did not personally know, he followed-up with additional questions and checked the County's vendor registry to verify that he was not receiving gifts from prohibited donors.

(18) A review of the two CE Form 9s filed by the Respondent (composite Exhibit D) reflect they were filed with the Commission on Ethics on April 30, 2020 (postmarked April 27, 2020), and July 9, 2020 (postmarked July 6, 2020). The disclosure form filed on April 30, 2020, contains nine GoFundMe donations over \$100 that were given to the Respondent during November and December 2019<sup>2</sup>. The disclosure form filed on July 9, 2020, lists one donation over \$100 that was given during January 2020. "Part D – Filing Instructions" of the CE Form 9 states, "The form must be filed no later than the last day of the calendar quarter that follows the calendar quarter for which this form is filed (For example, if a gift is received in March, it should be disclosed by June 30.)"

(19) The Respondent confirmed that the CE Form 9s that were due at the end of March 2020, and June 2020, were not timely filed. The Respondent acknowledged that the filing of

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<sup>2</sup> This disclosure form also includes donations that were \$100, which is under the required reporting amount, and a donation that was not related to the GoFundMe account.

this instant ethics complaint (Complaint No. 20-060) on April 20, 2020, prompted him to review his records to determine if he was required to report any contributions on a CE Form 9, and he then realized he had not filed the disclosure form(s) relative to the legal defense fund. He explained that he was aware from his contact with County Attorney Rogers that he was required to disclose any donations over \$100 as gifts, but that he had forgotten to file the form(s) due to his preoccupation with the Covid-19 pandemic. The Respondent stated that, after receiving notice of this instant ethics complaint in April 2020, he contacted the Florida Commission on Ethics and was advised to submit the CE Form 9 as soon as possible. The Respondent stated the first disclosure form he filed included donations that were due to be reported as gifts by the end of March 2020, but he did not mail the disclosure form until late April 2020 (it was received by the Commission on Ethics on April 30, 2020). The Respondent stated the same situation occurred for the CE Form 9 that included a donation that was due to be disclosed by the end of June 2020. That disclosure form was not received by the Commission on Ethics until July 9, 2020. He stated that his tardiness in filing the second disclosure form was also due to the pandemic and was not intentional.

(20) The Respondent confirmed, after reviewing his records, that there were a total of 44 contributions made through the GoFundMe account, and 11 of the contributions were in excess of \$100. He explained that he used the contributors' list from the GoFundMe page to complete the above-referenced CE Form 9s. The Respondent provided screenshots of his GoFundMe account from the account administrator login (appended as Exhibit E), which lists all contributors, including those who requested to remain anonymous.

(21) A comparison of the GoFundMe screenshots provided by the Respondent (Exhibit E), and the two CE Form 9s that he filed with the Commission on Ethics, reveal that the Respondent did not include on either of the disclosure forms Mr. Richard Andres, who donated \$250. The Respondent explained that any contributor whom he failed to list on either of the CE Form 9s was not left off the list intentionally, and it was his understanding that all the donors who gave in excess of \$100 had been reported. When questioned about Mr. Andres, the Respondent stated that he (Andres) is a retired Navy Senior Chief who he (Underhill) served with while in the military. He advised that Mr. Andres is not a lobbyist or vendor of the County. The Respondent said he plans to file an amended CE Form 9 to include Mr. Andres' contribution, but he had not done so by the date this Report of Investigation was completed.

(22) Mr. Bear noted there was a \$5,000 contribution towards the cost of the Respondent's legal defense from Mr. Arthur Miltenberger listed on the Respondent's CE Form 9 filed on April 30, 2020, that was not listed on the GoFundMe page. A review of the subject gift disclosure form reflects that Mr. Miltenberger made the \$5,000 donation to the Respondent's legal defense fund with a check on December 3, 2019, and did not contribute through the GoFundMe site.

(23) County Attorney Rogers advised by telephone that the County does not have a lobbyist registration system nor does the County's Purchasing Department maintain a list of vendors.

(24) 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.

(25) A review of the County Commission meeting minutes for the above-referenced period of time reflects that one of the donors listed on the GoFundMe site as giving more than \$100 came before the County Commission on January 17, 2019, to discuss his company's offer to purchase property from the County. This donor was Mr. Fred Hemmer who on January 7, 2019, submitted a Letter of Intent to have his company, Hemmer Consulting, LLC, and 68 Ventures, LLC, purchase approximately 530 acres (identified as OLF8) from the County for \$18 million. During the January 17, 2019, Board of County Commissioners' Committee of the Whole Workshop meeting, Mr. Hemmer appeared with his attorney, Will Stokes, and they spoke in favor of being considered for the sale of the property. The GoFundMe records reflect that Mr. Hemmer donated \$250 to the Respondent's legal defense fund on November 27, 2019.

#### **Social Media Allegation**

(26) It appeared from complaint 20-060 that Mr. Bear alleged the Respondent publicized the legal defense fund on a social media page affiliated with the County. Mr. Bear clarified when interviewed that the Respondent publicized the above-referenced GoFundMe page on his personal Facebook accounts. He said the Respondent stated on the GoFundMe page that the funds were being used for his personal legal defense and the post was viewable to anyone in the public. Mr. Bear stated the GoFundMe post was shared approximately 70 times on Facebook. Mr. Bear said the Respondent posted the link on all of his (Respondent's) social media accounts and requested individuals to share the post. However, Mr. Bear did not have any knowledge of the link being shared on any social media pages maintained by the County.

(27) The Respondent stated that when citizens asked him how they could support him with the various lawsuits he directed them to the GoFundMe link on his private Facebook accounts. The Respondent stated the County does not have a policy prohibiting the creation of a private Facebook account as a Commissioner. He explained that he has 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. He said the County does not manage, nor have access to, the Facebook page that he uses as a Commissioner.

(28) County Attorney Rogers confirmed that the Respondent or his family members control the Facebook accounts that he uses to disseminate information to his constituents. She stated that these are private social media platforms that are not controlled, operated, or managed by County employees. She noted that other Commissioners have also created private Facebook accounts to keep their constituents informed of various issues that they deem important within their Districts and the County.

### **Legal Services Gift Reporting**

(29) Complainant Bear alleges that the Respondent accepted personal legal services provided without charge and failed to disclose the cost of these services as gifts on a CE Form 9. The Complainant stated that two of the lawsuits, Valentino v. Underhill (filed April 10, 2015) and Valentino v. Underhill (filed July 7, 2017), are related to allegations of defamation by the Respondent against a former County Commissioner (the Respondent's predecessor). Mr. Bear stated that the Respondent prevailed in both of these lawsuits and they have been dismissed. A third lawsuit, Miller v. Underhill (filed June 7, 2019), Mr. Bear said, also involved a defamation lawsuit filed against the Respondent in which the Respondent again prevailed. The fourth lawsuit, Bear v. Underhill (filed October 4, 2019), Complainant Bear noted, was filed by him (Bear) against the Respondent and the Escambia Board of County Commissioners for failing to fulfill a public records request that he (Bear) made relative to obtaining copies of Facebook pages that the Respondent personally maintains.

(30) The Circuit Court of the First Judicial Circuit records reflect that the Respondent was named as a Defendant in five civil suits. The first case, Valentino v. Underhill (Case Number 2015CA000620), filed on April 10, 2015, was a libel/slander case filed against the Respondent and three other defendants and involved behavior that occurred prior to the Respondent's service on the County Commission. This case was dismissed with prejudice on November 18, 2015. The Respondent's attorneys in this matter were Scott Remington and James R. Green, Jr., of the Clark Partington law firm. Complainant Bear alleges that an attorney from the Clark Partington law firm informed County Attorney Rogers that the firm intended to "write off" the Respondent's unpaid legal fees relative to this lawsuit as an "uncollectable debt."

(31) County Attorney Rogers recalls speaking with Attorney Remington about the legal fees that the Respondent owed to the firm relative to a request the Respondent made (in 2017) concerning if the County could pay his legal fees for this lawsuit and a second lawsuit filed against him by Mr. Valentino. She does not recall if Mr. Remington told her that the firm had determined its fees to be uncollectable. She provided a copy of a September 19, 2017, letter to her from Mr. Remington stating the Respondent was responsible for one-third of the legal fees concerning the Valentino lawsuit. Mr. Remington advised in the letter that the Respondent's portion of the legal fees was \$7,388.16, and that, at the time the letter was written in September 2017, the Respondent had made a partial payment of that amount. However, the letter and attached documents do not reflect how much the Respondent had paid towards the legal fees at that time. Ms. Rogers provided records which reflect that the matter concerning the Respondent's legal fees was addressed during the September 21, 2017, County Commission meeting. Minutes from the meeting reflect that the County Commission voted not to pay the legal fees for the Respondent.

(32) Attorney Remington confirmed by telephone that his law firm represented the Respondent and the three other defendants in Case Number 2015CA000620 and the case was dismissed by Summary Judgement in favor of the defendants. County Attorney Rogers, he said, contacted him in 2017 to inquire if the Respondent had any unpaid legal fees because Commissioner Underhill had asked her if it was appropriate for the County to pay his legal



fees for this case. Mr. Remington stated that he told Ms. Rogers he planned to write-off the Respondent's balance as uncollectable. He noted that Ms. Rogers informed him that, because the Respondent is a public official, if he (Remington) wrote-off the balance the Respondent owed, Commissioner Underhill could be in violation of having received a gift without reporting it. As a result of this conversation, Mr. Remington stated, he decided not to write-off the debt. He recalled that at some point, the Respondent contacted him about representing him in a second lawsuit Mr. Valentino filed against him and he (Remington) told the Respondent that he could not represent him because he (Underhill) had not paid his bill related to the first Valentino lawsuit. Mr. Remington said the Respondent seemed surprised by this and he (Remington) told him to pay whatever he could over time on the balance of the bill. Records from Mr. Remington's law firm reflect that the Respondent made three payments of \$100 each on August 29, 2017, October 11, 2017, and December 12, 2017. Mr. Remington said he is not involved in the collection of debts for his firm, but it appears 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." He recalled that the Respondent and his wife contacted him in 2020 to inquire about any outstanding amount owed and were informed of the unpaid balance. Records from the Clark Partington law firm reflect that full payment was received on May 8, 2020. Mr. Remington stated that, because of his conversation with County Attorney Rogers, he never planned to write-off the Respondent's debt and that the failure to take any action to collect when the Respondent stopped making partial payments was due to an oversight on behalf of his firm.

(33) The Respondent recalled that there was an agreement with attorney Remington that each defendant would pay one-quarter of the legal fees relative to the lawsuit, as there were four defendants named in the lawsuit (the Respondent, Inweekly Media, Inc., Rick Outzen, and Jeremy Morrison). He provided a copy of the June 9, 2015, engagement letter provided to him by Attorney Remington which notes, "The bill will be split evenly between you and the other defendants." He recalled that he did not receive a billing statement from the Clark Partington law firm after the case was dismissed and he forgot to follow-up on this matter. When a second lawsuit was filed against him by Mr. Valentino in July 2017, the Respondent continued, he went to Mr. Remington to have him represent him again and was advised that he had an outstanding balance that he owed the firm. He said 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. The Respondent said he subsequently contacted the firm and asked for an itemization of the charges to determine if they were correct, but he claims he never received this information and again forgot to follow-up by contacting the firm, noting that he assumed a lawyer would never let him forget that he had an outstanding bill. He maintains that it was not until he was notified of this instant ethics complaint (Complaint No. 20-060, filed on April 20, 2020) that he recontacted the Clark Partington law firm and was advised that he owed one-third of the total bill. He 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. The Respondent said Mr. Remington agreed with him and he promptly paid the outstanding balance in full. The Respondent provided a copy of a May 8, 2020 letter and email from Mr. Remington that confirms all fees and costs incurred on his (the Respondent's) behalf were paid in full on that date.

(34) Mr. Remington confirmed that in May 2020, the Respondent ultimately paid a total of \$5,022.87 in legal fees and costs relative to the first Valentino v. Underhill case. He noted that initially the Respondent was billed \$7,388.16, which was one-third of the total fees and costs of \$22,164.50. In May 2020, Mr. Remington continued, the Respondent expressed an interest in paying his remaining portion of the bill and pointed out to him that the letter of engagement, written in 2015, noted that the bill was to be split evenly between the defendants, which meant the Respondent only owed one-quarter of the total bill. He related that, in addition to reducing the amount owed from one-third to one-quarter, the Respondent and his wife questioned specific charges that they believed should have been paid by the other defendants. As a result of their discussion, Mr. Remington said, he agreed with them and deducted \$519 from the amount owed to arrive at the total of \$5,022.87.

(35) The second lawsuit, Valentino v. Underhill (Case Number 2017CA001008), was filed against the Respondent and one other defendant on July 7, 2017. It also was a libel/slander case that involved a matter that had occurred prior to the Respondent's election to the County Commission. This matter was dismissed on February 23, 2018, because the plaintiff failed to state a cause of action. The Respondent's lawyer in this matter was Brentt E. Palmer.

(36) Attorney Brentt Palmer, with Young, Bill, Boles, Palmer, Duke, & Thompson, P.A., advised by telephone that he recalled representing the Respondent in July 2017 concerning Valentino v. Underhill. He maintains that all of the legal services billed in the lawsuit were paid by the Respondent and none of the legal fees were dismissed as uncollectable. Records confirm that the Respondent paid the firm a \$10,000 retainer by check on October 12, 2017, and he was refunded \$1,394.00 of the retainer on March 20, 2018.

(37) The third civil suit, Miller v. Underhill (Case Number 2019CA000931), was filed against the Respondent on October 4, 2019. This lawsuit was a libel/slander case that involved a matter that occurred during the Respondent's tenure on the County Commission. The lawsuit was closed on October 4, 2019, by a Summary Judgement in favor of the Respondent. The plaintiff filed an appeal with the First District Court of Appeal on November 1, 2019, and, on July 31, 2020, the appellate court affirmed the trial court's decision in favor of the Respondent. The Respondent was represented in this matter by attorneys Edward P. Fleming and R. Todd Harris.

(38) Records reflect that on July 18, 2019, the Escambia Board of County Commissioners initially discussed providing a legal defense to the Respondent in this matter, but took no action. On November 7, 2019, the County Commission discussed paying the Respondent's legal fees that had accumulated up to that point concerning this civil suit. The Respondent made a motion during this meeting to have the County pay his legal fees, but the motion died for lack of a second. This matter was again addressed by the Board of County Commissioners on January 21, 2021, and, when the Respondent made a motion for the County to pay his legal fees, the matter again died for lack of a second.

(39) Mr. Bear provided copies of two payments the Respondent made towards his legal fees with McDonald Fleming, LLP, concerning Miller v. Underhill. One payment is dated December 2, 2019, for \$3,369.75, and a second payment is dated December 6, 2019, in the