

amount of \$5,356.79. A December 29, 2020, letter from the McDonald Fleming law firm to County Attorney Rogers (appended as Exhibit F) reflects that, at the time the letter was sent, the Respondent had paid \$10,726.49 in legal fees to the firm and had an unpaid balance of \$12,739.46. Mr. Bear stated that because the Respondent had a remaining balance for his legal fees, the legal services should have been listed as a gift.

(40) County Attorney Rogers recalled that in late 2019, the County Commission discussed paying the legal fees for the Respondent in Miller v. Underhill, but the issue initially was placed on hold by the County Commission until the final outcome of the appeal proceeding had been determined. Attorney Rogers confirmed, based on a letter received from Attorney Todd Harris with the McDonald Fleming law firm, that the Respondent personally paid \$10,726.49, in legal fees in this particular lawsuit. She said to her knowledge none of the legal fees have been written off as uncollectable. Attorney Rogers confirmed that during the January 21, 2021, County Commission meeting, a motion was made to pay the remaining legal fees of the Respondent in Miller v. Underhill, but that the motion failed for lack of a second. Attorney Rogers stated that the Respondent has since filed a Writ of Mandamus to compel the County to reimburse his fees in this proceeding and the matter has not been settled.

(41) Escambia County Civil Court records confirm that on January 25, 2021, the Respondent filed a Petition for Writ of Mandamus against the Escambia County Board of Commissioners stating that, inasmuch as the lawsuit has gone through the appeals process and was ruled in his favor, and according to the County's own policy, the County should pay for his reasonable attorney's fees and costs. The County filed a Motion to Strike the summons issued in this matter on February 17, 2021, and the matter had yet to be resolved at the time this Report of Investigation was written.

(42) The Respondent reported that this lawsuit is the only legal matter alleged by Mr. Bear that still has an outstanding balance owed for the legal fees. He estimated that the balance owed is approximately \$17,000. The Respondent maintains that County policy notes that the County will pay the legal fees for County Commissioners if they are involved in legal matters arising from their public position. He stated that he attempted to have the County Commission approve the payment of his legal fees in this case to the McDonald Fleming law firm, but his fellow Commissioners refused to second his motion during the January 2021 Commission meeting. He explained he has not reported the outstanding legal fees as a gift because he is making scheduled payments to the law firm for the amount owed, and he expects to prevail in the lawsuit against the County Commission to have the County pay the remaining legal fees and reimburse him any amount he has previously paid.

(43) Attorney Fleming confirmed by telephone that the Respondent has been making payments on the legal fees and costs associated with the Miller case. He stated that none of the fees owed by the Respondent have been written-off or discounted. Mr. Fleming noted that his firm is still representing the Respondent in the federal case filed by Mr. Bear, and in the civil case the Respondent has filed against Escambia County to compel the County to pay the outstanding legal fees. He said he anticipates prevailing in each of these matters and having the County reimburse the Respondent for the fees he has paid his firm to date.

(44) The fourth civil suit, Bear v. Underhill (Case Number 2019CA001636), was filed against the Respondent and the Escambia County Board of Commissioners on October 4, 2019. The records confirm that this case involved a claim that the Respondent and the County Commission failed to honor a public records request for information the Respondent allegedly posted on a Facebook website he maintains. Deputy County Attorney Charles V. Peppler represented the Respondent in this matter, and it appears the County's insurer paid the legal fees. This case was closed on November 7, 2019, when the plaintiff filed similar allegations in the United States District Court for the Northern District of Florida, Pensacola Division. Mr. Bear filed a new circuit civil suit against the Respondent and the Board of County Commissioners (Case Number 2019CA002004) on December 10, 2019, making essentially the same allegations as in the previous lawsuit. This case is still open. The Respondent initially was represented in this matter by attorneys Gregory T. Stewart, Heath R. Stokley, and Elizabeth D. Ellis. On January 27, 2020, Mr. Greg K. Rettig replaced the above-referenced attorneys, and on July 21, 2020, Mr. Millard L. Fretland was named as the Respondent's attorney.

(45) The Respondent stated that the County has paid the legal fees he has incurred for both of the lawsuits filed in circuit court by Mr. Bear. He added that he never asked any of the law firms that represented him in any of the above-referenced lawsuits to represent him for free or at a discounted rate.

(46) County Attorney Rogers confirmed that the County's insurance provider is paying the legal fees for both the County and the Respondent relative to the lawsuits filed by Mr. Bear.

Reimbursement for Travel

(47) Mr. Bear alleges that the Respondent solicited reimbursement for travel expenses and the cost of shipping certain equipment from a private not-for-profit organization that accepts 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.

(48) Mr. Bear stated that the Respondent solicited a reimbursement from Pensacola Sports Association, Inc. (PSA), a local not-for-profit, for a trip he took to Canada to retrieve equipment for a Jet Ski tournament in his district. He said Visit Pensacola, Inc., is the main organization that receives Tourist Development Tax funds from the Escambia County Commission and the Escambia County Tourist Development Council, and Visit Pensacola, in turn, gives funds to the PSA and the Art Culture and Entertainment, Inc. (ACE), another not-for-profit company. He said each organization has its own governing board. Mr. Bear said PSA was having difficulties getting the equipment needed to hold the Jet Ski tournament shipped from Canada. Mr. Bear claimed that, because of this, the Respondent volunteered to drive to Canada to take delivery of the equipment. Mr. Bear stated that PSA's President Ray Palmer informed him that the Respondent reached out to the PSA and asked for reimbursement for the mileage driven in his personal vehicle. He said the Respondent was reimbursed \$1,106.90 for mileage, based on the federal reimbursement rate of \$0.545 per mile, and \$1,039.52 in shipping charges for returning the equipment to Canada. Mr. Bear

alleges that the Respondent failed to include the reimbursements as gifts on a CE Form 9. Records reflect that the tournament was held April 14 – 15, 2018.

(49) A review of the reimbursement records confirm that the Respondent was reimbursed \$1,106.90 by the PSA on August 9, 2018, for the round-trip mileage he drove to Canada. The mileage appears to have been calculated using Google Maps. On August 21, 2018, the Respondent was reimbursed \$1,039.52 by the PSA for the cost of shipping the equipment used in the Jet Ski competition back to Canada. The Respondent provided an invoice from GPS, LLC (appended as page G5 of composite Exhibit G), which lists the charges he paid to ship the equipment. The above-referenced records reflect that the Respondent was reimbursed a total of \$2,146.42, directly by the PSA, for his help in this matter.

(50) County Attorney Rogers stated that the PSA does not have a contract or agreement with the County for funding. She confirmed that the PSA obtains funding from Visit Pensacola, the County's designated tourism promotion agency, which obtains millions of dollars annually in funding from the County's Tourist Development Tax. However, Ms. Rogers noted that Visit Pensacola is obligated to pass on some of the funding it receives to both the PSA and ACE. She added that representatives of both PSA and ACE have come before the Board of County Commissioners, with representatives of Visit Pensacola, to make requests of the County for funding through Visit Pensacola.

(51) PSA Director Ray Palmer advised by telephone that the Respondent did not approach the Association inquiring about reimbursement relating to his trip to Ontario, Canada. Mr. Palmer stated the Respondent was operating in the capacity as a private citizen when he volunteered to travel to Canada on behalf of the PSA. He said PSA employee Sally Garst suggested to him that the services the Respondent provided in taking delivery of the equipment were subject to reimbursement. Mr. Palmer stated that the Respondent provided the necessary receipts and received reimbursements (appended as composite Exhibit G) for his expenses. Mr. Palmer provided a copy of an August 7, 2018, email sent by Ms. Garst to the Respondent that reflects the Respondent had submitted receipts for gasoline purchases, but Ms. Garst informed Commissioner Underhill that she planned to calculate his mileage reimbursement on 54.5 cents per mile to eliminate the need for him to submit individual gas receipts. However, Mr. Palmer could not recall if the decision to reimburse the Respondent was made before or after Commissioner Underhill made the trip to Canada. He advised that the Letter of Agreement (appended as page G1 of composite Exhibit G) was not written until September 2018, at the request of staff of Visit Pensacola to document the reason for the reimbursements to the Respondent.

(52) Ms. Garst has retired from the PSA and efforts to contact her have been unsuccessful.

(53) Mr. Palmer verified that the PSA receives their funding directly from Visit Pensacola, which receives tourism development tax funds from the County through a "unified budget" that involves Visit Pensacola, PSA, and ACE. He said that, although he does not believe he is a lobbyist for the PSA, he does appear before the Board of County Commissioners annually, along with representatives of Visit Pensacola and ACE, to present the budget request and

answer any questions the County Commissioners may have about the budget request. He verified that this same budget system was in effect during 2017 and 2018.

Note: A review of the minutes of the County Commission meetings held from April 2017 through September 2018, do not reflect that Mr. Palmer, or anyone from Visit Pensacola and/or ACE, appeared before the County Commission relative to the unified budget.

(54) The Respondent stated that he, his son, and his administrative assistant traveled to Ontario, Canada, to take delivery of "buoys" for the 2018 Emerald Coast Grand Prix Jet Ski tournament that was held in April 2018. He explained that the buoys are used to outline the designated racecourse and the event could not be held without them. He said the event was hosted and promoted by Dawn Dawson, the owner of Reflections Advertising. The Respondent stated that organizations, such as Reflections Advertising, host sporting events in the County that qualify for grant funding from the County's tourist tax. He confirmed that the organizations apply for assistance through the PSA, which, in turn, obtains funding from Visit Pensacola. He acknowledged that the County Commission indirectly approves the PSA's budget annually through Visit Pensacola, but is not involved in deciding what events are funded. The Respondent added that the PSA is not a lobbyist or vendor of the County.

(55) The Respondent explained that the buoys were originally scheduled to ship from South Florida, but, for whatever reason, Reflections Advertising was unable to obtain the buoys in time for the event. He said the Emerald Coast Grand Prix has been occurring for years, and the event could not take place without the buoys. The Respondent said he has been involved in water sports for many years, because a son of his competes nationally in this sport, and both his sons planned to race in the Emerald Coast Grand Prix. He stated the event was important to the community, and the County already had spent money advertising the tournament. The Respondent said he learned about the issue with the buoys from Mr. Palmer of the PSA, who told him that the event was in "crisis mode." The Respondent stated he learned from Mr. Palmer that Ms. Dawson had a friend in Ontario, Canada, who would loan buoys for the race for free. He said they were quickly approaching the date of the event, and, according to Mr. Palmer, even if the buoys were shipped, they would not be delivered by the event date and the cost was too expensive to expedite the shipping. The Respondent stated that, when he learned of this problem, he offered to drive to Ontario to pick-up the buoys. He said Mr. Palmer informed him that this would be a reimbursable expense under the grant that Reflections Advertising obtained through the PSA. However, he does not recall if he was told about the reimbursement before or after he made the trip to Canada. He added that he did not ask for reimbursement for his time or for his meals while on the trip.

(56) The Respondent explained that, following the tournament, he built a crate to return the buoys to the owner in Ontario. He did not recall the total amount of the cost to ship the items. The Respondent stated he provided all of his expense receipts to Reflections Advertising, who submitted them to the PSA for reimbursement, and he subsequently received reimbursement directly from the PSA for the expenses he accrued. He noted that he paid for all of the expenses using his personal credit card. The Respondent maintains that it did not occur to him to ask the County Attorney for advice on the matter because he was not operating in his capacity as a Commissioner, did not use his public position to get reimbursed, was not paid

for his time, his assistant was not working on County time during his travel to Canada, and no County equipment was used. He added that he does not believe the reimbursement could be considered a gift because he was only reimbursed for his actual expenses.

Confidential Transcripts Allegation

(57) Complainants Joe Ward (20-073) and John F. Stenicka (20-103) allege that on May 11, 2020, the Respondent publicly shared and/or published the confidential transcripts of five private "shade meetings" of the Board of County Commissioners concerning an active court case about a water/sewage system issue. Complainant Ward noted that the shade meetings occurred on February 18, 2014, April 10, 2014, June 25, 2015, July 7, 2015, and August 4, 2016. The complaints allege the Board had not authorized the public release of the transcripts at the time that the Respondent shared and/or published them.

(58) Records reflect that in 2014, the County sued the Innerarity Island Development Corporation, the company responsible for the private sewer and water system for Innerarity Island, after the company notified the County of its intent to abandon the system. The shade meetings were held between the County Attorney and members of the County Commission to discuss the County's legal options concerning the sewer and water system.

(59) County Attorney Rogers confirmed that the Board of Commissioners was involved in litigation regarding the water/sewer utility issues relating to Innerarity Island, a private gated community located in the Respondent's District in Escambia County. She said the Florida Sunshine Law has an exception in the law allowing the Commissioners to meet in private litigation sessions (shade meetings) as long as certain guidelines are followed. Attorney Rogers stated the guidelines require a court reporter to provide transcripts of the meetings. She said the transcripts of the private Commission meetings concerning the Innerarity Island water/sewer matter were to be held in the County Attorney's office until the conclusion of the litigation.

(60) Attorney Rogers recalled that during a regular County Commission meeting, Commissioners asked if they could receive copies of the transcripts of the confidential meetings so they could review what had occurred in the previous meetings. She said that, because the Commissioners are her clients, she released the transcripts via a May 11, 2020, email (a copy of the email is appended as Exhibit H) and noted in the email, which had the heading "CONFIDENTIAL RECORDS ATTACHED," that the transcripts were confidential because the litigation had not concluded, and that the transcripts should not be released or shown to the public or the media until the litigation was concluded.

(61) Attorney Rogers recalled that the Respondent asked her if the transcripts could be released to the public, and he provided her with an informal Attorney General Opinion stating this matter involved "waivable confidentiality." She recalled telling the Respondent that her client was not just him, but all five County Commissioners, and she believed that, in order for the Attorney General's opinion to be applied, the majority of the Commissioners would have to agree on releasing the transcripts. Attorney Rogers stated that, in spite of having "confidential" noted in capital letters in the email, and despite explaining to the Respondent