

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

SOCIAL MEDIA:

On November 26, 2019, Respondent created a GoFundMe⁷ 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) Respondent publicized the GoFundMe legal defense account on his personal Facebook pages. (ROI 26) 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. (ROI 27) The County does not manage, nor have access to, the Facebook page that Respondent uses as a Commissioner. (ROI 27, 28) These private social media platforms have been created and are utilized by other Commissioners to keep their constituents informed of various issues they deem important within their Districts and the County. (ROI 28) Complainant(s) could not provide any proof of Respondent improperly using social media pages maintained by the County. (ROI 26) There is no evidence that Respondent publicized the legal defense fund on a social media page affiliated with the County, as alleged.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

⁷ A "GoFundMe" account is a website that allows individuals and groups to solicit and receive monetary contributions online. (ROI 11, FN 1) The organizer of the GoFundMe page may elect to show a contributor's name as "anonymous" but the organizer is able to see the name of each contributor. (ROI 11, FN 1)

ALLEGATION FOUR

Respondent is alleged to have 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.

APPLICABLE LAW

Section 112.3148(3), Florida Statutes, provides as follows:

A reporting individual or procurement employee is prohibited from soliciting any 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 the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

In order to establish a violation of Section 112.3148(3), Florida Statutes, the following elements must be proved:

1. Respondent must have been a reporting individual or procurement employee.
2. Respondent must have solicited a gift, food or beverage.
3. The gift must have been solicited from a vendor doing business with Respondent's agency, political committee or committee of continuous existence or a lobbyist who lobbies the Respondent or his agency or the partner, firm, employer, or principal of such a lobbyist.
4. The gift must be for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

ANALYSIS

Some of the facts are set forth above under Allegation Three. As a public officer required to file financial disclosure, Respondent is a "reporting individual" subject to the restrictions and disclosure requirements of Section 112.3148, Florida Statutes (the "gift" law). The gift law is implicated when a legal defense fund is established to assist with the payment of a public official's personal legal expenses.

The definition of a "gift" in Section 112.312(12)(a), Florida Statutes, provides:

"Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly or indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given, including:

3. Tangible or intangible personal property. . . .

In CEO 91-37, the Commission on Ethics opined that cash contributions to help underwrite a city councilman's newsletter to his constituents would constitute "gifts" for purposes of the gift law, even though "cash" was not explicitly listed in the definition of a "gift." In that opinion, the Commission also noted that the city councilman would be prohibited by Section 112.3148(3), Florida Statutes, from soliciting contributions from a vendor doing business with the reporting individual's agency, political committees, from lobbyists who lobbied the city, and he was prohibited from accepting any contribution in excess of \$100 from political committees or from lobbyists who lobbied the city. Contributions in excess of \$100 from persons who were not considered to be "vendors" or "lobbyists" were permissible and were to be reported in accordance with Section 112.3148(8), Florida Statutes, on the city councilman's Quarterly Gift Disclosure form.

Applying the rationale of that opinion to Respondent's situation, donations to his GoFundMe legal defense fund established for his benefit constitute "gifts" to Respondent. The next issue is whether any contributors to Respondent's legal defense fund were prohibited donors for purposes of Sections 112.3148(3) and 112.3148(4), Florida Statutes.

Under Section 112.3148(3), Respondent is prohibited from soliciting any gift from a vendor doing business with his agency, a lobbyist of his agency, or the partner, firm, employer, or principal of such a lobbyist. The focus then turns to portions of Section 112.3148, Florida Statutes, which provides in relevant part:

"Lobbyist" means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency. [§112.3148(2)(b)1., Fla. Stat.]

"Vendor" means a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services. [§112.3148(2)(f), Fla. Stat.]

One contributor to the GoFundMe account, Fred Hemmer, had submitted a Letter of Intent to the County on January 7, 2019 to have his company, Hemmer Consulting, LLC, and 68 Ventures, LLC, purchase approximately 530 acres from the County for \$18 million. (ROI 25) At the County Commission's Workshop meeting on January 17, 2019, Hemmer and his attorney spoke in favor of being considered for the sale of the property. (ROI 25)

GoFundMe advertises as the "#1 Fundraising Platform for Crowdfunding."⁸ Respondent started a fundraising website with a goal of reaching \$50,000 for his legal defense to relieve his

⁸ <https://www.google.com/search?client=firefox-b-1-d&q=GoFundMe>

family of the financial burden. (ROI 13, 15) Respondent's GoFundMe solicitation⁹ caught Fred Hemmer's attention and Hemmer donated \$250 on November 27, 2019. (ROI 25) Within the preceding 12 months (January 2019), Hemmer and his attorney sought to influence the County Commission in an effort to purchase property from the County. That makes Hemmer either a lobbyist or a principal of a lobbyist – both are prohibited donors.

As a reporting individual, Respondent solicited the general public for a thing of value (e.g., money) for his personal benefit and the benefit of his family. 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. Hemmer, a prohibited donor, responded positively to Respondent's solicitation for money for his legal defense.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes.

ALLEGATION FIVE

Respondent is alleged to have violated Section 112.3148(4), Florida Statutes, by knowingly accepting a contribution(s) exceeding \$100 to a legal defense fund from vendors doing business with Respondent's agency, or lobbyists who lobby Respondent's agency, or principals of such lobbyists.

⁹*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." <https://www.lawinsider.com/dictionary/solicit>

APPLICABLE LAW

Section 112.3148(4), Florida Statutes, provides as follows:

REPORTING AND PROHIBITED RECEIPT OF GIFTS BY INDIVIDUALS FILING FULL OR LIMITED PUBLIC DISCLOSURE OF FINANCIAL INTERESTS AND BY PROCUREMENT EMPLOYEES

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. If the gift is 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.

In order to establish a violation of Section 112.3148(4), Florida Statutes, the following elements must be proved:

1. Respondent must have been a reporting individual or procurement employee.
2. Respondent must have knowingly accepted a gift.
3. The donor of the gift must have been a vendor doing business with Respondent's agency, a political committee, or lobbyist who lobbies the Respondent or his agency.
4. Respondent knew or reasonably believed that the gift had a value of more than \$100.

ANALYSIS

The facts regarding Respondent's legal defense fund with GoFundMe are set forth under Allegation Three. The facts regarding Fred Hemmer's donation to Respondent are set forth under Allegation Four. To recap, Respondent is a "reporting individual" who knowingly accepted a monetary contribution of \$250 from Fred Hemmer. Hemmer is a lobbyist or principal of a lobbyist, who donated money to Respondent within 12 months of lobbying Respondent's agency, which makes him a prohibited donor. As such, Respondent could not legally accept Hemmer's \$250 donation.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes.

ALLEGATION SIX

Respondent is alleged to have violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, "Quarterly Gift Disclosure" disclosing contributions exceeding \$100 to a personal legal defense fund.

APPLICABLE LAW

Section 112.3148(8), Florida Statutes, provides as follows

(8)(a) Each reporting individual or procurement employee shall file a statement with the Commission on Ethics on the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less, except the following:

- 1. Gifts from relatives.**
- 2. Gifts prohibited by subsection (4) or s. 112.313(4).**
- 3. Gifts otherwise required to be disclosed by this section.**

Section 112.312(12)(a), Florida Statutes, provides in its relevant part:

"Gift" for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days

ANALYSIS

Most of the facts are set forth above under Allegations Three, Four, and Five. Filing a gift disclosure statement is part of the responsibility of choosing to hold or run for public office or employment. The purpose of filing a gift disclosure statement is to increase confidence in government and openness by: (1) assisting public servants in identifying potential conflicts of interest; and (2) allowing citizens to become aware of the financial interests of the officials and employees who serve them. Art. II, §8, Fla. Const.; §112.311, Fla. Stat.

As stated above under Allegation Three, in September 2017, County Attorney Rogers sent Respondent an email labeled "Importance: High," citing law and opinions from the Commission on Ethics, educating Respondent about his obligations as an elected official to comply with the gift law. (ROI 11, Exhibit C) Respondent ignored her emphatic warning of, "I cannot stress this enough," and failed to report donations over \$100 as gifts. (ROI 11, 14, Exhibit C)

The law requires gifts to be disclosed on a CE Form 9, "Quarterly Gift Disclosure," each calendar quarter in which the gift is received. (Exhibit D) A review of the two CE Form 9s filed by Respondent reflect they were filed with the Commission on April 30, 2020 (postmarked April 27, 2020), and July 9, 2020 (postmarked July 6, 2020). (ROI 18, Exhibit D) Both forms were untimely filed. (ROI 19, Exhibit D)

The disclosure form filed on April 30, 2020, contains nine GoFundMe donations over \$100 that were given to Respondent during November and December 2019.¹⁰ (ROI 18) Respondent acknowledged that he was aware of the requirement to disclose gifts; however, it was the current ethics complaint(s) that prompted him to file the first CE Form 9 pertaining to his GoFundMe account. (ROI 19, Exhibit D) The disclosure form filed on July 9, 2020, lists one donation over \$100 that was given during January 2020. (ROI 18) Respondent alleges that he had forgotten to file the second form due to his preoccupation with the Covid-19 pandemic. (ROI 19) Respondent stated that he reported all contributions in excess of \$100 on the two CE Form 9s, "Quarterly Gift Disclosure (Gifts Over \$100)." (ROI 17, Exhibit D) The evidence shows that he failed to disclose on either CE Form 9 a \$250 donation from Richard Andres. (ROI 21, Exhibits D, E) Andres is reportedly not a lobbyist or vendor of the County. (ROI 20) He allegedly is a retired Navy Senior Chief who Respondent served with while in the military. (ROI 20) Respondent told the Commission's Investigator that he plans to file an amended CE Form 9 to include Mr. Andres' contribution, but he had not done so by the date the Report of Investigation was completed.

Respondent not only untimely disclosed gifts received, he failed to fully disclose required information.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes.

¹⁰ 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. (ROI 18) There was a \$5,000 contribution towards the cost of Respondent's legal defense from Arthur Miltenberger listed on the Respondent's CE Form 9 filed on April 30, 2020, that was not listed on the GoFundMe page. (ROI 21) Miltenberger made the \$5,000 donation to Respondent's legal defense fund with a check on December 3, 2019 and did not contribute through the GoFundMe site. (ROI 21)

ALLEGATION SEVEN

Respondent is alleged to have 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.

APPLICABLE LAW

Section 112.3148(3), Florida Statutes, is set forth under Allegation Four.

ANALYSIS

LEGAL SERVICES:

Respondent was represented by various law firms in the several lawsuits filed against him over a six-year period, and he accumulated several thousands of dollars in legal fees. (ROI 14, 30, 32, 35, 36, 37, 44) In the first case filed in mid-2015, *Valentino v. Underhill*, Case No: 2015CA000620, Respondent was represented by the Clark Partington law firm. (ROI 30) Respondent alleges he did not receive a bill after the case was dismissed and he claims he "forgot to follow-up" on the billing matter. (ROI 33)

A second lawsuit was filed against Respondent in July 2017. (ROI 33) The Clark Partington law firm refused to represent Respondent in his second lawsuit because of the outstanding balance of \$22,164.50 from the previous lawsuit. (ROI 33, 34) Respondent was told that he could pay whatever he could over time. (ROI 32) Respondent requested an itemization of the charges to determine if they were correct, but claims he never received this information and again forgot to follow-up by contacting the firm. (ROI 33)

Respondent paid an unknown amount toward the bill prior to September 2017 and, on August 29, 2017, Respondent made a \$100 payment toward the balance. (ROI 31, 32) In September 2017, the County declined Respondent's request to pay his legal fees incurred in the

first and upcoming lawsuits. (ROI 29, 30, 31) Around September 19, 2017, the Clark Partington attorney who represented Respondent in the first lawsuit told County Attorney Rogers he planned to write-off the remaining balance of \$7,388.16 as uncollectible. (ROI 31, 32) County Attorney Rogers informed him that, because Respondent is a public officer, a write-off of the balance owed could be in violation of having received a gift without reporting it. (ROI 32) Respondent made two more payments of \$100 each on October 11, 2017 and December 12, 2017. (ROI 32) The law firm's accounting department never attempted to collect the remainder owed and the matter seemed to have "fallen through the cracks." (ROI 32)

After Respondent was notified of the instant complaint filed in 2020, he contacted the Clark Partington law firm and was advised that he owed one-third of the total bill for legal services rendered in the first lawsuit; however, he successfully established that he actually owed one-quarter of the total bill pursuant to the 2015 Letter of Engagement. (ROI 33, 34) After negotiation of the fees and costs charged, Respondent ultimately paid a balance of \$5,022.87 on May 8, 2020. (ROI 33, 34) None of the legal fees were written-off as uncollectible. (ROI 33, 34)

In the second lawsuit, *Valentino v. Underhill*, Case No. 2017CA001008, filed July 7, 2017, Respondent paid another law firm a \$10,000 retainer on October 12, 2017. (ROI 36) On March 20, 2018, \$1,394 was refunded to Respondent. (ROI 36) None of the legal fees were written-off as uncollectible. (ROI 36)

In the third lawsuit, *Miller v. Underhill*, Case No. 2019CA000931, filed October 4, 2019, Respondent paid \$10,726.49 in legal fees to the firm and had an unpaid balance of \$12,739.46 as of December 29, 2020. (ROI 37, 38, 39, Exhibit F) Respondent prevailed in the case and an appeal was taken by the plaintiff. (ROI 37) In 2019 and again in 2021, Respondent made two separate motions at Commission meetings to have the County pay his legal fees but both motions died for

lack of a second. (ROI 38, 40) On January 25, 2021, Respondent filed a Writ of Mandamus to compel the County to reimburse his fees in this case and the County filed a Motion to Strike the summons issued in this matter. (ROI 41) Respondent's balance is approximately \$17,000 and the matter was still pending as of April 19, 2021. (ROI 40, 42) Respondent has been making scheduled payments to the law firm but he expects to prevail in the lawsuit against the County Commission. (ROI 42, 43) To date, no fees or costs have been written-off or discounted in this case. (ROI 40, 43)

Two other lawsuits were filed against Respondent. (ROI 44, 45) The County's insurance provider is paying the legal fees for both the County and Respondent relative to these lawsuits. (ROI 46)

As stated previously, in the first lawsuit, Respondent alleges he did not receive a bill from the Clark Partington law firm after the case was dismissed and he claims he "forgot to follow-up" on the billing matter for over two years. (ROI 33) He placed responsibility on the law firm stating, "he assumed a lawyer would never let him forget that he had an outstanding bill." (ROI 33)

Respondent solicited Clark Partington's legal services with an understanding solidified by a contract that he would pay for those services. (ROI 31, 32, 33, 34) When Respondent did not pay, the law firm eventually forgave the debt as uncollectible *until* the County Attorney advised that a write-off of the fees may create a problem for Respondent. (ROI 30, 32)

There 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. Respondent did not solicit pro bono services from the law firm as evidenced by the contract for the payment of legal services. When Respondent

breached the contract and deliberately avoided paying his debt for years,¹¹ he was required to report the unpaid legal fees as a gift on a CE Form 9, "Quarterly Gift Disclosure."

There is insufficient evidence to support an allegation that Respondent solicited free legal services from the Clark Partington law firm.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes.

ALLEGATION EIGHT

Respondent is alleged to have violated Section 112.3148(4), Florida Statutes, by knowingly accepting free personal legal services valued at 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.

APPLICABLE LAW

Section 112.3148(4), Florida Statutes, under Allegation Five.

ANALYSIS

The facts regarding the Clark Partington law firm are set forth under Allegation Seven. There is no dispute that Respondent is a "reporting individual." When the law firm forgave the fees owed for its legal services, the debt became a gift to Respondent. Similarly, when Respondent deliberately avoided paying his substantial debt of legal fees for years,¹² he converted the debt into a gift. Elements one, two, and four for a violation have been met.

¹¹ If Respondent intended to pay the legal fees he owed, he would have been proactive in rectifying the original bill of \$22,164.50, which he eventually disputed. (ROI 33) Instead, Respondent did nothing to abide by the terms of the contract regarding money he owed the law firm.

¹² If Respondent intended to pay the legal fees he owed, he would have been proactive in rectifying the original bill of \$22,164.50, which he eventually disputed. (ROI 33) Instead, Respondent did nothing to abide by the terms of the contract regarding money he owed the law firm.

There 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. Element three for a violation has not been met.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes.

ALLEGATION NINE

Respondent is alleged to have violated Section 112.3148(8), Florida Statutes, by failing to file a CE Form 9, "Quarterly Gift Disclosure" disclosing free personal legal services exceeding \$100 from the Clark Partington law firm.

APPLICABLE LAW

Section 112.3148(8), Florida Statutes, is set forth under Allegation Six.

ANALYSIS

Respondent received a gift of legal services from the Clark Partington law firm for services rendered on his behalf in 2015. It is likely Respondent never intended to pay his outstanding bill. Evidence of his lack of intent and/or negligence is: he had not entered into a payment plan with the law firm; he delayed making *any* payments until 2017 and then he only made three¹³ - \$100 payments when prompted to do so; and he made no further payments until May 2020, shortly after the first of three ethics complaints was filed, and then he paid the balance in full. His actions were purposeful and willful in not reporting legal services that he knew were in excess of \$100 for which he did not provide equal or greater consideration within 90 days of receipt. By doing so, a gift was bestowed upon Respondent and it should have been reported on a CE Form 9, "Quarterly Gift

¹³ Only three payments were verified.

Disclosure," the calendar quarter in which the gift is received. A review of the two CE Form 9s filed by Respondent reflect that he did not disclose the gift of legal services. (ROI 18, Exhibit D)

Respondent was required to file a CE Form 9 at the end of March 2018¹⁴ disclosing the gift of legal services valued at \$5,022.87 received from the Clark Partington law firm. (ROI 34, Exhibit A1) The due date of the March 2018 calendar quarter is based on the fact Respondent made his last payment toward the fees in December 2017. (ROI 32) Thus, the remaining balance became a gift to Respondent, which he was required to disclose.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes.

ALLEGATION TEN

Respondent is alleged to have 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.

APPLICABLE LAW

Section 112.313(7)(a), Florida Statutes, provides as follows:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP. (a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer

¹⁴ "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.)" (Exhibit D4)