

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DOAH Case Nos.: 21-3753EC, 21-3754EC and 21-3755EC
(consolidated)

Complaint Nos.: 20-063, 20-073, and 20-103
(consolidated)

**In re: Douglas Underhill,
Respondent.**

**RESPONDENT'S RESPONSES TO ADVOCATE'S
FIRST SET OF INTERROGATORIES**

OBJECTIONS TO INTERROGATORIES

The Respondent objects to all "instructions" and "definitions" that are outside of or in addition to the means available and the manner provided in the Florida Rules of Civil Procedure. Additionally Respondent objects to the sheer volume of interrogatories resulting from these unauthorized "instructions" and "definitions, which would result in the number of interrogatories being in excess of the number permitted by the applicable Rules of Civil Procedure.

INTERROGATORIES

Interrogatory No. 1: "Identify" each person you expect to call as an expert witness at the Final Hearing, the subject matter on which such expert is expected to testify, the substance of the facts and opinions to which such expert is expected to testify, and a summary of the grounds for each opinion expected to be expressed by such expert.

Response: At the present time, my attorneys do not expect to call an expert witness at the final hearing.

Interrogatory No.2: "Identify" each person who you expect to call as a witness at the Final Hearing and a brief description of the subject matter upon which such person will testify.

At the present time, my attorneys expect to call the following witnesses at the final hearing.

a. Respondent, Doug Underhill, who can be contracted through his attorneys. Commissioner Underhill may address each allegation the probable cause order.

b. David Bear, 6120 Enterprise Drive, Pensacola, FL 32505. This witness may address each of the allegations in his complaint.

c. Joe Ward, 5480 North Shore Road, Pensacola, FL 32507. This witness may address each of the allegations in his complaint.

d. John Stenicka, 18 Port Royal, Pensacola, FL 32507. This witness may address each of the allegations in his complaint.

e. Richard Andres. 850-516-7188. This witness will testify regarding donations he gave and facts surrounding that donation.

f. Arthur Miltenberger. 724-238-4012. This witness will testify regarding donations he gave and facts surrounding that donation.

g. County Attorney Alison Rogers, 221 Palafox Place, Suite 430, Pensacola, FL 32502. This witness will testify regarding facts surrounding the then pending litigation related to the release of shade meeting transcripts, county systems related to identification of vendors and other related matters.

h. Scott Remington, Post Office Box 13010, Pensacola, FL 32591. This witness will testify regarding legal services and bills related to Commissioner Underhill

i. Edward P. Fleming, 719 South Palafox Street, Pensacola, FL 32502. This witness will testify regarding legal services, bills, and payments related to legal services rendered to Commissioner Underhill.

j. R. Todd Harris, 719 South Palafox Street, Pensacola, FL 32502. This witness will testify regarding legal services and bills related to Commissioner Underhill

k. Ray Palmer, 101 west Main Street, Pensacola, FL 32502. This witness will testify regarding payment for expenses incurred by Commissioner Underhill.

l. Sally Garst, contact information unknown at this time. This witness will testify regarding payment for expenses incurred by Commissioner Underhill.

m. Tom Dannheisser 850-377-7240. This witness will testify about the status of the lawsuit allegedly the basis of the shade meeting.

n. Jayne Ward, 850-972-2180 This witness will testify about litigation relating to the sewer system.

Interrogatory No. 3: "Identify" each document that you expect or anticipate introducing at the Final Hearing. Please attach a copy.

Response: At the present time, my attorneys have not made any decisions as to the documents expected or anticipated to be introduced at at the final hearing. They are continuing to review the documents in the Commission's investigative file.

Interrogatory No. 4: Contemporaneously with the service of these interrogatories, the undersigned Advocate has forwarded to you the Advocate's First Request for Admissions. If you have denied any of the Requests for Admission, "state the basis" for your denial. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: See responses to the Advocate's First Request for Admissions for the basis for each denial.

Interrogatory No. 5: "Identify" all affirmative or any other defenses that you intend to rely on at the Final Hearing.

Response: It is my understanding that the Commission is required to prove all elements of the offense. I am not aware affirmative or other defenses upon which I intend to rely, other than to deny that I violated the Code of Ethics as alleged.

Interrogatory No. 6: Explain why you did not timely file a CE Form 9, "Quarterly Gift Disclosure," for a donation made by Fred Hemmer. "State the basis" for your contention that you did not violate section 112.3148(8), Florida Statutes, in connection with this donation and identify any law, rule, or other support that you are aware of that excuses the late filing of a CE Form 9, "Quarterly Gift Disclosure," under similar circumstances. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: My failure to timely file the CE Form 9, "Quarterly Gift Disclosure," for a donation made by Fred Hemmer resulted from being focused on issues from the impacts of COVID-19 in Escambia County and the State of Florida.

Interrogatory No.7: Explain why you did not file a CE Form 9, "Quarterly Gift Disclosure," for a donation made by Richard Andres. "State the basis" for your contention that you did not violate section 112.3148(8), Florida Statutes, in connection with this donation, and identify any law, rule, or other support that you are aware of that excuses the late filing of a CE Form 9, "Quarterly Gift Disclosure," under similar circumstances. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: My failure to timely file the CE Form 9, "Quarterly Gift Disclosure," for a donation made by Fred Hemmer resulted from being focused on issues from the impacts of COVID-19 in Escambia County and the State of Florida.

Interrogatory No.8: Explain why you believe you should be excused for the late filing of your CE Form 9(s). "Identify" any and all mitigating factors that you contend excuse your late filing(s). Include in your response an explanation as to why you believe you do not have to follow the law regarding your obligation to file CE Form 9, "Quarterly Gift Disclosures." If you believe that your conduct is consistent with the law, describe your understanding of your legal obligations with respect to filing of "Quarterly Gift Disclosures."

Response: See responses to Interrogatory 6 & 7.

Interrogatory No. 9: Explain how you did not know Fred Hemmer and/or his company, Hemmer Consulting, LLC, and/or 68 Ventures, LLC, was a vendor or lobbyist of Escambia County. "State the basis" for your contention that you did not violate 112.3148(4), in connection with Mr. Hemmer's donation. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: It was my understanding that neither Fred Hemmer nor his companies, Hemmer Consulting, LLC or 68 Ventures, LLC, were a vendor to Escambia County or a lobbyist to or before Escambia County.

Interrogatory No. 10: "State the basis" for your contention that you did not violate section 112.3148(3) in connection with Mr. Hemmer's donation. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: It was my belief that Mr. Hemmer was not a lobbyist or vendor to a Escambia County or a lobbyist to or before Escambia County.

Interrogatory No. 11: "Identify" all communications, including oral conversations, you had with any individual regarding the GoFundMe

page. Include in your response the communications identified in paragraphs 16 and 17 of the ROI.

Response: I talked many people about the issue, including groups, and I did not maintain any records of people to whom I talked.

Interrogatory No. 12: Explain why you disagreed with County Attorney Alison Rogers' legal advice to you that the Shade Meeting Transcripts should remain confidential. "State the basis" for your contention that the Shade Meeting Transcripts could be shared as a public record. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: County Attorney Alison Rogers was unable to provide me with a satisfactory justification for her unilateral determination that the matter discussed in the Shade Meetings met the criteria for the Shade Meeting exemption from the government-in-the-sunshine law. Further, County Attorney Rogers failed to provide a suitable justification for refusing to turn over the shade transcripts to the Clerk of Court to be published as a public record after the legal matters in potential dispute had been settled by Interlocal Agreement between the Emerald Coast Utility Authority and the Escambia County BOCC and accepted by the court.

Interrogatory No. 13: "State the basis" for your release of the Shade Meeting Transcripts after you were advised by County Attorney Alison Rogers that they should not be released due to their confidential nature. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: See response to Interrogatory 12. In my opinion, the County was violating the sunshine law by failing to release the transcripts. My duty as a custodian of public records is not changed by an attorney with whom I disagree.

Interrogatory No. 14: "Identify" any information you submitted to any local official, agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation you allege occurred in connection with the Shade Meeting Transcripts. Include in your response the date of the submission and to whom the information was submitted.

Response: I did not submit information to any local official, agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the alleged violations which occurred in connection with the Shade Meeting Transcripts.

Interrogatory No. 15: "State the basis" for your contention that you released the Shade Meeting Transcripts because of suspected gross mismanagement, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: Numerous other documents already in the public domain at that time identified a pattern of behavior on the part of then-Commissioner Gene Valentino and then-county employee and Innerarity resident Joe Ward to take ownership of the sewer system. This would have benefited Mr. Ward personally at taxpayer expense, contrary to the law that established ECUA as the special district responsible for sewer service in Escambia County

Interrogatory No. 16: "Identify" the public record request you received, as identified in paragraph 64 of the ROI. Please provide a copy, if written.

Response: The request was verbal, from a citizen named Kemp Evans. I have no record of the request beyond the email I sent which stated "as requested".

Interrogatory No. 17: Explain why you believe you do not have to follow the law regarding your obligation to abide by Florida's public records law. If you believe that your conduct is consistent with the law, describe your understanding of your legal obligations with respect to Florida's public records law.

Response: I believe that my actions were not inconsistent with the requirements of law, especially when the County Attorney is misusing the exception to that law to shield the County from public review of our conduct. There was no legitimate or legal reason not to release the shade transcripts and thus the public records law authorized and mandated the release of the transcripts.

Interrogatory No. 18: Explain why you believed you could unilaterally release the Shade Meeting Transcripts.

Response: See response to Interrogatory 18. In addition, I relied on the informal AG Advisory Legal Opinion dated November 26, 2014 which covers a case which I consider similar in which a single member of a board felt it was his duty to share information with the citizens. In my view, maintaining the confidentiality of these records did not comply with the requirements of the shade meeting exemption.

Interrogatory No. 19: Did you discuss releasing the Shade Meeting Transcripts with any other Escambia County Commissioners prior to you releasing them to the public? If so, please provide name(s) and contact information of those Commissioners. If not, explain why you did not discuss releasing the Shade Meeting Transcripts with other Commissioners prior to you releasing them to the public.

Response: I did not.

Interrogatory No. 20: Explain and describe how and to whom you released the Shade Meeting Transcripts. "Identify" each instance in which you released any portion of the Shade Meeting Transcripts.

Response: I discussed the County's behavior with the citizens of Innerarity Island on their Facebook page, "Innerarity Island Homeowners". I had received a verbal request from a citizen named Kemp Evans and as required as a custodian of the record, forwarded the minutes to the citizen on May 11.

Interrogatory No. 21: Do you contend you or others benefited from the release of the Shade Meeting Transcripts? "State the basis" for your contention. In your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: I do not contend that I or anyone else received a special private benefit from the release of the Shade Meeting Transcripts, separate from the benefit received by all members of the public.

Interrogatory No. 22: Explain how you solicited donations to your GoFundMe page. Include in your answer the "identity" of each individual that you are aware of that shared a link to the GoFundMe page.

Response: I spoke to many supporters and publicized the effort on social media. It is impossible to "identify" all persons to whom I spoke or communicated.

Interrogatory No. 23: Do you dispute that the Legal Fees constitutes a gift? If so, "state the basis" for your contention. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: Yes, I dispute assertion. A legal fee is a charge to me for legal services. It is not a "gift."

Interrogatory No. 24: Explain why you did not timely report the Legal Fees on your CE Form 9, "Quarterly Gift Disclosure."

Response: I did not receive any "gifts" regarding payment for legal services and thus did not have to report them.

Interrogatory No. 25: Do you dispute that the Travel Reimbursement constitutes a gift? If so, "state the basis" for your contention. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

Response: Yes, I dispute this assertion. I did not receive anything other than what I spent or loaned the promoter. I did not receive a gift.

Interrogatory No. 26: Explain the circumstances surrounding the Travel Reimbursement. Include in your response how you came to be involved with the Travel Reimbursement, who asked you to drive to Canada, and "identify" the individuals who were involved in the Travel Reimbursement matter.

Response: I made a detailed statement on this issue to the investigator for the Commission on Ethics, which is recounted in the Commission's Report of Investigation.

Interrogatory No. 27: "Identify" each contribution to the GoFundMe page that you hid from public disclosure.

Response: I did not hide any contribution to the GoFundMe page that you hid from public disclosure.

Interrogatory No. 28: Explain your relationship with each individual who contributed over \$100 to the GoFundMe page.

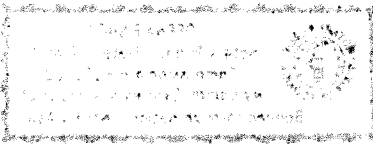
Response: Each of these individuals are supporters or acquaintances.

Interrogatory No. 29: Do you dispute that Jonathan Owens benefited from the release of the Shade Meeting Transcripts? If so, "state the basis" for your dispute. In crafting your response, note that the definition of "state the basis" is broad and includes, among other things, identifying the persons, documents, and other facts that support your position.

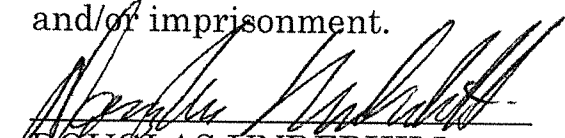
Response: Yes, I dispute this assertion. Neither Mr. Owens nor anyone else received a special private benefit from the release of the Shade Meeting Transcripts, separate from the benefit received by all members of the public.

Interrogatory No. 30: Explain your relationship with Arthur Miltenberger.

Response: Mr. Miltenburger is a political supporter with whom I am a friend and for whom I great respect.

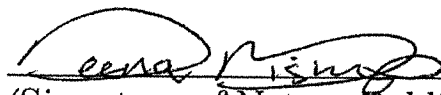


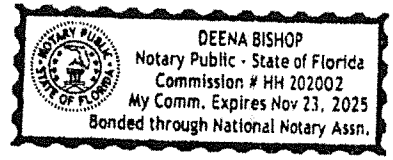
I understand that I am swearing or affirming under oath to the truthfulness of the answers to these interrogatories and that the punishment for knowingly making a false statement includes fines and/or imprisonment.


DOUGLAS UNDERHILL

STATE OF FLORIDA
COUNTY OF Escambia

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 22 day of February 2022, by Douglas Underhill (name of person making statement).


(Signature of Notary Public- State of Florida)



(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced Driver's License