

MAR 16 2018

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**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

CONFIDENTIAL

In re: Nancy Oakley,

Respondent.

Complaint No. 17-013

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint, Report of Investigation, and Response to Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, Nancy Oakley, is a Madeira Beach City Commissioner. Complainant is Shane B. Crawford of Madeira Beach, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether the Respondent violated Section 112.313(6), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on February 13, 2018.

ALLEGATION

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by exhibiting inappropriate behavior toward City staff.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, provides as follows:

MISUSE OF PUBLIC POSITION. No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

The term "corruptly" is defined by Section 112.312(9), Florida Statutes, as follows:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.
2. Respondent must have:
 - a) used or attempted to use his or her official position or any property or resources within his or her trust,
 - or
 - b) performed his or her official duties.
3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for him- or herself or others.
4. Respondent must have acted corruptly, that is, with wrongful

intent and for the purpose of benefiting him- or herself or another person from some act or omission which was inconsistent with the proper performance of public duties.

ANALYSIS

Respondent served as a Madeira Beach City Commissioner from 2007 through 2013 and was elected again in March 2017. (ROI 3, 16) Complainant served as the City Manager from 2011 through June 2017 when he resigned. (ROI 4) Complainant had been suspended from the position on May 4th with Respondent being one of the three commissioners who voted for the suspension. (ROI 4 Note)

Complainant alleges that Respondent made unwanted physical advances towards him and another member of the City's staff during her first tenure ending in 2013. (ROI 1, 4) He alleges that Respondent made unwanted sexual advances toward Dave Marsicano, the Director of the City's Public Works Department and City Marina. (ROI 4) The sexual advances were in the form of unwanted kissing and licking of his and Marsicano's necks and faces while Respondent was inebriated. (ROI 4) Complainant advised that he never confronted Respondent about her behavior because he was concerned about his job as he served at the pleasure of the City Commission. (ROI 8)

Complainant advised that these advances occurred on a number of occasions but this recommendation will focus on one event.¹ (ROI 5) In November 2012, a City Commission meeting was held in conjunction with the "King of the Beach Fishing Tournament," which was hosted by the Old Salt Fishing Foundation. (ROI 5, 6, 9, 10, 13) The outdoor City Commission

¹ Complainant advised of similar behavior by Respondent at a City-sponsored event, "Grunt Hunt," but could not recall the date of the event. (ROI 7)

meeting last for a few minutes and was held specifically to adopt the city of Bimini, Bahamas as its sister city. (ROI 5) Complainant contends that Respondent appeared to be jealous of his then-Executive Assistant and now wife, Cherylanne (McGrady) Crawford. (ROI 5) As such, after the meeting ended, it is alleged that Respondent approached Complainant, while he was standing near Cherylanne, and stated, "Don't ever bring that blonde bitch around me again." (ROI 5, 6) Respondent then proceeded to grab Complainant by his crotch and slowly lick him from his Adam's apple all the way up his face. (ROI 5, 6) This caused Cherylanne to tell Respondent that her actions were inappropriate which led to Respondent throwing a punch at her but missing. (ROI 5, 6)

Cherylanne confirmed these events and added that Dave Marsicano and his wife, Shelly, were witnesses. (ROI 6) Cherylanne advised that Respondent's actions also led Shelly to get into a physical altercation with Respondent. (ROI 6)

Marsicano, who has worked for the City for 15 years, confirmed these events and advised that Respondent did it to him too. (ROI 9) He added that Respondent's actions led to him and his now ex-wife Shelly Davis (formerly Shelly Marsicano) abruptly leaving the tournament to prevent a fight from occurring. (ROI 9) Marsicano advised that he would not have tolerated Respondent's behavior had she not been a city commissioner. (ROI 9) He advised that because of her behavior, if he saw Respondent at a City event, he would leave or avoid her in fear of unwanted sexual advances. (ROI 9) Shelly confirmed these events as described by Complainant and Marsicano. (ROI 10)

Complainant provided the following names as witnesses: Francine Jackson, former Executive Assistant to the City Manager from 2003-2011, and Tom Verdensky, President of the Old Salt Fishing Foundation. (ROI 11, 12)

Jackson, who left the City in 2014, advised that while she could not provide specific dates nor provide an eye witness account, she recalled Complainant and Marsicano telling her that Respondent licked their faces at public events soon after the action occurred. (ROI 12)

Verdensky advised that he recalled Respondent licking Complainant's face during the November 2012 event. (ROI 13) Verdensky advised that Respondent, while apparently inebriated, has licked his and other people's faces in the past during other fishing tournaments. (ROI 15) Verdensky provided the name of another witness, Joseph Campagnola. (ROI 13)

Campagnola advised that he was serving as head of security for the November 2012 event. (ROI 14) He recalled being alerted by radio that there was an altercation near the stage and arrived as Respondent was walking away. (ROI 14) He advised that he was immediately informed by Complainant that words were exchanged between Cherylanne, Shelly, and Respondent. (ROI 14) Also, he was informed that Respondent hugged Complainant and licked his face. (ROI 14)

Respondent denied that she kissed or licked Complainant's or Marsicano's neck or face in a sexual manner. (ROI 16)

The overwhelming testimony reflects that Respondent acted inappropriately with City staff while she was serving as a City Commissioner. There is sufficient evidence to show Respondent made unwanted advances toward Complainant and/or Marsicano on at least one occasion if not more. Respondent was in a position of authority which caused Complainant and Marsicano to fear retribution if they complained.

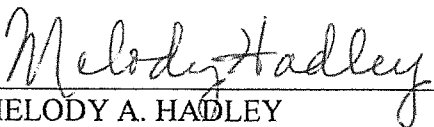
Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by exhibiting inappropriate behavior toward City staff.

Respectfully submitted this 16th day of March, 2018.



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